TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 59

DISTRICT OF COLUMBIA, PETITIONER,

vs.

PAUL M. DeHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 25, 1941.

CERTIORARI GRANTED MAY 26, 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 59

DISTRICT OF COLUMBIA, PETITIONER,

vs.

PAUL M. DEHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 18, 1941.

1 BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED AUG. 28, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PAUL M. DEHART, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 339

PETITION

The above named petitioner petitions for a cancellation of an assessment of taxes against him and alleges as follows:

1. The petitioner is an individual with residence at 1426 Massachusetts Avenue, S.E., Washington, D. C.

2. The tax in controversy is an income tax for the calendar year ending December 31, 1939, and in the amount of $16.36.

3. The individual income tax return was dated January 29, 1940, and the tax was paid by the petitioner under protest in writing on February 7, 1940, as will appear in the copy of the individual income tax return hereto attached as Exhibit "A."

4. It is the belief of the petitioner that the disallowance made by the Board of Assistant Assessors was based upon the following error: That the petitioner was domiciled in the District of Columbia on December 31, 1939.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

a. That the petitioner while an employee of the United States Government, Washington, D. C., retained his residence

at 1933 N. 4th Street, Harrisburg, Pennsylvania, and was therefore not domiciled in the District of Columbia on December 31, 1939.

b. That the petitioner is registered as a voter in Dauphin County, Pennsylvania, a photostat copy being filed with the individual income tax return.

c. That the petitioner pays occupational tax to the County of Dauphin, Pennsylvania.

d. That the petitioner has seen notices in newspapers of decisions of Courts that a federal employee who retains his legal voting residence in a State is not a domicile of the District of Columbia and therefore is not subject to personal tax in the District of Columbia.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, and refund the sum of $16.36.

PAUL M. DEHART,
Petitioner
1426 Massachusetts Ave., S.E.,
Washington, D. C.

2 DISTRICT OF COLUMBIA, *ss:*

Paul M. DeHart, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true.

PAUL M. DEHART

Subscribed and sworn to before me this 24th day of August, 1940.

GORDON E. CLARK,
Notary Public, D. C.
My Commission Expires April 15, 1944.

3 EXHIBIT "A"

DISTRICT OF COLUMBIA

INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1939

Name. Paul M. DeHart
Address: 1426 Massachusetts Ave., S.E.,
Washington, D. C.

INCOME

1. Salaries and other compensation for personal services.	$2699.94
3. Interest on bank deposits, notes, mortgages, etc.	238.82
Total income	$2938.76

DEDUCTIONS

7. Contributions paid	145.55
8. Interest paid	1.00
9. Taxes paid	156.15
Total deductions	$ 302.70

COMPUTATION OF TAX

12. Net income		$2636.06
13. Personal exemption	$1000.00	
15. Taxable income		$1636.06
16. Income tax		$ 16.36

4 CERTIFICATE OF REGISTRATION

Dauphin County, Pa.
Name of Elector Paul M. DeHart
Address CITY OF HARRISBURG
No. 1933 N. 4 Street
11 Ward 2 Dist.
Serial No. 58978
Party Rep.
Insert "No Party" if not Enrolled

The above mentioned Elector has been Registered and

Enrolled this 6 Day of Sept. 1938.
Signed CHAS. H. BARNS,
Registrar or Clerk

5 OPINION No. 244

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 9, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PAUL M. DEHART, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 339

FINDINGS OF FACT AND OPINION

The petitioner paid to the District of Columbia an income tax for the calendar year 1939 in the sum of $16.36. A claim for refund of such tax was duly filed by the petitioner and denied by the Assessor. The petitioner contends that such action by the Assessor was erroneous; and that his claim for refund should have been granted. In support of such contention the petitioner alleges that he was not domiciled within the District of Columbia during the calendar year 1939.

FINDINGS OF FACT

The petitioner is an individual. For several years last past the petitioner has been, and still is residing at 1426 Massachusetts Avenue, S. E., Washington, D. C.

In 1914 the petitioner accepted a clerical position in the Patent Office in Washington under Civil Service. His employment at that time was indefinite. Concerning the nature and tenure of such employment the petitioner testified as follows:

"(Q) (By the Board) What was your idea of the particular employment?

"(A) I worked in a railroad office for 16 hours a day and 365 day a year and I was tired of it and this work was easier work and for that reason I came down but in six months I was ready to go back and I have not changed my attitude, except I am older now.

"(Q) The question that suggest itself from your statement is why didn't you go back in six months?

6 "(A) The work was so much easier and like nearly all government employees I traveled the line least resistance.

"(Q) Did you say your employment at that time was indefinite.

"(A) Yes, but I also had a year's leave of absence from the railroad that I could have gone back to but it meant sixteen hours of work a day."

The petitioner did not return to the railroad office at the end of the year, but continued in the Civil Service up to and including the present time. He is now the Chief Clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington.

When the petitioner came to Washington in 1914 he was a single person. In 1917 he was married to a native of Washington. No children resulted from such union. Shortly after the marriage the couple purchased as a home premises 1426 Massachusetts Avenue, S. E., in Washington, wherein they both resided as long as the wife lived, and in which the petitioner has since resided. When first purchased the home was encumbered by a mortgage, which the petitioner subsequently paid off.

The petitioner's wife died in 1935. While she was living the petitioner purchased an unimproved lot at "Selby on the Bay" in nearby Maryland and an unimproved lot in Hill Crest, a subdivision in the District of Columbia. The reason and circumstances of such purchases were stated by the petitioner on cross-examination to be the following:

"(Q) Do you own any real estate in or near the District other than your home? Your return shows you have some real estate in Maryland?

"(A) Yes, an unimproved lot at Selby on the Bay; also an unimproved lot at Hill Crest about 33rd and Denver Street, Southeast.

"(Q) Were they purchased as investments?

"(A) No, they were purchased on my wife's plea for a better residence and summer residence, but they are both up for sale. One of them is out Pennsylvania Avenue, Southeast near Anacostia.

"(Q) An unimproved lot?

7 "(A) Yes.

* * * * * * *

"Q. When did you buy this lot in Hill Crest?

"A. About 1925.

"Q. And that was bought upon the plea of your wife for a better home?

"A. Yes.

"Q. At that time did she expect you to continue to make Washington your home?

"A. We had an agreement that on retirement six months would be spent at Selby. We proposed to sell our home here and for that reason bought this land with the idea of building two cottages.

"Q. Where would the Hill Crest lot come in in that situation?

"A. Well, the neighbors talked my wife into buying it. I didn't want to and she did. In fact, it was bought on the toss of a penny.

"Q. But you did think that was the thing to do.

"A. No, I never was interested in it myself but I acquiesced in her desire. When she died I put the sign for sale on it. As a married man you are talked into a lot of things you wouldn't do otherwise.

"Q. But you did buy this property in Hill Crest?
"A. Yes."

The petitioner carries bank accounts or deposit accounts in the following Washington banking or financial institutions: National Metropolitan Bank, Bank of Commerce and Savings, and Perpetual Savings Association. He owns first trust notes on property located in Maryland and Virginia.

In 1915 the petitioner became a member of the Keller Memorial Lutheran Church of Washington, D. C. and has been an active member from that time to the present. At one time he was president of the Christian Endeavor Society attached to that church, and at the present is a member of a special committee of the church.

Up to the time of his wife's death the petitioner was a member of the Pennsylvania Society of Washington.

During the calendar year 1939 the petitioner made the following contributions to religious and charitable institutions in the District of Columbia: $100.00 toward a window in the Lutheran Church, $30.00 or $35.00 for church dues, and contributions to the Red Cross and the Shrine Hospital.

The petitioner is a member of Washington units of the "Tall Cedars of Lebanon" and the "Mystic Shrine," both Masonic bodies.

The petitioner is a member of the Motor Club of Washington, which is the local unit of the American Automobile Association.

The petitioner has filed all of the Federal income tax returns with the Collector of Internal Revenue, Baltimore, Maryland.

Up to the repeal of the District of Columbia intangible personal property tax the petitioner always paid such tax upon his intangibles.

The petitioner was born and reared in Pennsylvania, wherein he resided until he came to the District of Columbia in 1914, and wherein reside his parents. His parents reside at premises 1933 North Fourth Street, Harrisburg, in which there is

kept intact the petitioner's room in which some of his clothes and his childhood toys are kept. The petitioner claims the above mentioned premises as his "legal residence." The petitioner does not pay any sum as rent or for lodging, but does make monetary presents to his parents from time to time. The petitioner visits his parents' home in Harrisburg over weekends at least eight times a year, and has been there between Christmas and New Year of each year.

The petitioner is a registered voter in Pennsylvania, and has been such and has voted in all general elections there since he became of age. Up to the repeal of the Pennsylvania poll tax law the petitioner annually paid such tax. Since the enactment of the Pennsylvania occupational tax law, which superseded the poll tax law, the petitioner has annually paid such occupational tax. The payment of such taxes, respectively, was a prerequisite to voting in Pennsylvania.

In November 1912 the petitioner became a life member of the Robert Burns Lodge No. 464, F. & A. M. and the Harrisburg Consistory, A. A. S. R., both Masonic bodies.

While he resided in Harrisburg the petitioner was a member of the Bible Class of the Pine Street Presbyterian Church of that city. While on visits to Harrisburg he attends such church; and during the calendar year 1939 made to it the following contributions: $100.00 for the white Christmas fund,
to the plate collections when attending on Sundays,
9 and an offering of $2.00 for China missions.

The petitioner owns jointly with his father a note secured by a mortgage on real estate in Pennsylvania.

The petitioner expects retirement from the Civil Service in four years. When on the witness stand in his own behalf he testified concerning what he intends to do upon retirement as follows:

> "A. My intention is this, the minute the thirty year retirement law goes through, if it does, I am selling the house and leaving. Unfortunately, on account of the mix-up last year and on account of the war situation I am

afraid this legislation will be deferred, but nevertheless I have only four years to go and then I expect to leave Washington when I retire."

It is stipulated by the petitioner and the respondent that on May 1, 1939, 13.59% of all persons employed in the executive branch of the Federal Government were so employed in the District of Columbia, and were residing in the District and nearby Maryland and Virginia; and 11.75% of all persons receiving annuities under the Civil Service Retirement Act were residing within the District of Columbia.

The Board finds as a fact that the petitioner at the end of one year after he removed to the District of Columbia in 1914 had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him at least until the death of his wife.

The petitioner duly reported his income for the calendar year 1939, and on February 7, 1940 paid to the Collector of Taxes the sum of $16.36 as an income tax for that year. At the same time the petitioner filed with the Assessor a claim for refund. On July 22, 1940 the Assessor disallowed the petitioner's claim for refund and so notified the petitioner. This proceeding was filed August 16, 1940.

There is no dispute as to the amount or computation of the tax.

10 OPINION

The sole question here presented for solution is whether the petitioner was domiciled in the District of Columbia on December 31, 1939. If he was, the income tax here involved was valid. If he was not, then it must be held that the payment of such tax was erroneous, and that the tax must be refunded. This is clear from a reading of section 2 of the District of Columbia Income Tax Act, which is in the language following:

"There is hereby levied for each taxable year upon the

income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates: * * *"

The Board has here found as a fact that at the end of one year (length of leave of absence from railroad office) after the petitioner came to Washington in 1914, upon the acceptance of a Civil Service position, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him, at least until the death of his wife in 1935. There is no proof that such intention does not still remain with the petitioner, except his declaration to the contrary, made while he was testifying in his own behalf in this proceeding, which, at the best, in matters of domicile, is unsatisfactory, and which must be regarded as a self-serving declaration. But even assuming that the petitioner has changed his intention, and now intends to remove from the District of Columbia upon his retirement four years hence, nevertheless, under the well established principle that intention to reside in a new jurisdiction unaccompanied by physical removal thereto is ineffective to accomplish a new domicile, the declared present intention of the petitioner can not affect his domicile in the District of Columbia, if, under the law as announced by the Court of Appeals, he is domiciled in the District of Columbia.

The fact that the petitioner will retire from the Civil Service in a few years should not of itself affect the proper solution of the question here presented. From the stipulation of the parties it appears that approximately the same proportion of both retired and active Federal employees reside in the District of Columbia; that is to say, 11.75 per cent of such retired
11 employees reside exclusively in the District, while 13.59 per cent of such active employees are employed in the District and reside therein and in the contiguous sections of Maryland and Virginia. It is not reasonable to suppose that Federal employees working and residing in localities without the District remove to the District upon their retirement from

Civil Service, but rather that they remain in their own localities. The Board believes that the fair inference to be drawn from such admitted facts is that most Federal employees actually working and residing in the District of Columbia continue to reside and make their homes therein upon their retirement from the Civil Service.

The petitioner, however, contends that he was not on December 31, 1939, and never has been domiciled in the District of Columbia. He relies upon the decision of the Court of Appeals in *Sweeney* v. *District of Columbia* App. D. C. , 113 F. (2d) 25 (Cert. Den. 60 S. Ct. 1082). In that case this Board found as a fact that when the taxpayer removed to the District of Columbia he had an intention to reside and make his home in the District for an indefinite period of time, and that on the tax day therein involved he still had such intention; that he was a free agent; and that he was physically present in the District of Columbia. It was also found as a fact in that case that the taxpayer had voted in most, if not all, of the elections in Massachusetts, and had paid the necessary poll tax. The Board also found as a fact that on the tax day involved and as late as the hearing on his appeal to the Board that the taxpayer had never paid the income tax imposed by Massachusetts on persons therein domiciled. In its opinion the Board concluded as a matter of law that the taxpayer was domiciled in the District of Columbia on the tax day, and held as a consequence that an intangible tax paid by the taxpayer had been validly assessed and collected. The taxpayer appealed to the Court of Appeals which reversed the Board's conclusion of law that the taxpayer was domiciled in the District of Columbia. From the foregoing brief statement of the facts and law in the *Sweeney* case it will be seen that there is no essential difference between the facts in that case and those in this proceeding. This Board is bound by the decisions of the Court of Appeals, and on the authority of the *Sweeney* case

holds as a matter of law the petitioner herein was not on
12 December 31, 1939, and never has been domiciled in the

District of Columbia. It follows, necessarily, that the tax here involved was erroneously paid to the District of Columbia; that the Assessor should have granted a refund to the petitioner, and that the petitioner is entitled to a refund of $16.36 paid by him to the District of Columbia as an income tax for the calendar year 1939.

Decision will be entered for petitioner.

Jo Morgan,
Member Sole.

13 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

Received and Filed Oct. 9, 1940

Board of Tax Appeals for the District of Columbia

Paul M. DeHart, Petitioner,

vs.

District of Columbia, Respondent.

Docket No. 339

DECISION

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 9th day of October, 1940,

Adjudged and determined That an income tax for the calendar year ending December 31, 1939, in the sum of $16.36 was erroneously collected from the petitioner by the District of Columbia, and that said petitioner is entitled to a refund of said total sum.

Jo Morgan,
Member Sole.

14 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 23, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART, Respondent.

DOCKET NO. 339

PETITION FOR REVIEW BY THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA OF A DECISION OF THE BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

The District of Columbia, petitioner in this cause, by Vernon E. West, Acting Corporation Counsel, hereby files its petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered October 9, 1940, determining that an income tax for the calendar year ended December 31, 1939, in the sum of $16.36 was erroneously collected from the respondent by the District of Columbia, and that said respondent is entitled to a refund thereof.

I

The petitioner, hereinafter referred to as the District, is a municipal corporation.

II

NATURE OF THE CONTROVERSY

(a) The controversy involves the domicile of the respondent and the validity of the collection from the respondent by the collecting authorities of the District of an income tax for the calendar year 1939.

(b) The District of Columbia Income Tax Act levies a tax for the taxable year 1939 and succeeding taxable years upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year.

15 (c) The respondent duly reported his income for the calendar year 1939, and on February 7, 1940, paid to the Collector of Taxes, D. C., the sum of $16.36 as an income tax for that year. At the same time, the respondent filed with the Assessor, D. C., a claim for refund. On July 22, 1940, the Assessor disallowed the respondent's claim for refund and so notified the respondent. The proceeding before the Board of Tax Appeals was filed on August 16, 1940, and on October 9, 1940, the Board held that the tax was erroneously collected from the respondent and that he was entitled to a refund of the total amount thereof.

III

The District, being aggrieved by the conclusions of law contained in the opinion of the Board of Tax Appeals, and by its decision entered in pursuance thereto, desires to obtain a review thereof by the United States Court of Appeals for the District of Columbia pursuant to the provisions of Section 4, Title IX, of the District of Columbia Revenue Act of 1937, as amended (Sec. 975, Title 20, D. C. Code, 1929, Supplement V), and Section 34 of the District of Columbia Income Tax Act (Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V).

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,
District Building.

DISTRICT OF COLUMBIA, *ss:*

Glenn Simmon, Assistant Corporation Counsel, D. C., being duly sworn, says that he is counsel of record in the above cause; that as such counsel he is authorized to verify
16 the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

(s) GLENN SIMMON,
Assistant Corporation Counsel, D. C.

SUBSCRIBED AND SWORN TO before me this 23rd day of October, 1940.

(s) ADAM GIEBEL,
Notary Public in and for the District of Columbia.
My commission expires sept. 15, 1944.

17 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 25, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART, Respondent.

DOCKET NO. 339

STIPULATION

It is hereby stipulated by and between counsel for the District of Columbia, petitioner, and Paul M. DeHart, respondent, that the findings of fact by the Board of Tax Appeals in the above cause correctly state the evidence presented at the hearing before the Board in said cause.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petiteoner.
(s) PAUL M. DEHART,
PAUL M. DEHART,
Respondent.

18 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 25, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART, Respondent.

DOCKET NO. 339

STATEMENT OF POINTS ON REVIEW

To: Mr. Paul M. DeHart,
1426 Massachusetts Avenue, S. E.,
Washington, D. C.,
Respondent.

The petitioner, District of Columbia, seeking review of the decision of the Board of Tax Appeals for the District of Columbia in the above cause, relies upon the following points on review:

(1) The Board of Tax Appeals erred in holding that the respondent was not domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(2) The Board of Tax Appeals erred in failing to hold that respondent was domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(3) The Board of Tax Appeals erred in holding that an income tax for the calendar year ended December 31, 1939, was erroneously collected from the respondent by the District and that respondent is entitled to refund thereof.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner.

Service of a copy of the foregoing Statement of Points on Review acknowledged this 25th day of October, 1940.

(s) PAUL M. DEHART,
Respondent.

19 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 25, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART, Respondent.

DOCKET NO. 339

DESIGNATION OF RECORD

To the Clerk of the Board of Tax Appeals:
You are hereby requested to prepare, certify, and transmit

to the Clerk of the United States Court of Appeals for the District of Columbia, with reference to the petition heretofore filed, the transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to-wit:

(1) Pleadings before the Board.

(2) Findings of Fact and Opinion of the Board of Tax Appeals.

(3) Decision of the Board of Tax Appeals.

(4) Petition for Review, with date of filing.

(5) Stipulation of evidence.

(6) Statement of Points.

(7) This Designation of Record.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner.

Service of a copy of the above Designation of Record acknowledged this 25th day of October, 1940.

(s) PAUL M. DEHART,
PAUL DEHART,
Respondent.

20 BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART, Respondent.

DOCKET No. 339

CERTIFICATE

I, PHYLLIS R. LIBERTI, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages, 1 to 20, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia, this 31st day of October, 1940.

PHYLLIS R. LIBERTI,
Clerk, Board of Tax Appeals for the
District of Columbia.

Endorsed on cover: No. 7779. District of Columbia, Petitioner, vs. Paul M. DeHart, respondent. United States Court of Appeals for the District of Columbia. Filed Nov. 1, 1940. Joseph W. Stewart, Clerk.

[fol. 20] Monday, March 10th, A. D. 1941.

No. 7779

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART

No. 7780

DISTRICT OF COLUMBIA, Petitioner,

vs.

HENRY C. MURPHY

The argument in the above entitled cause was commenced by Mr. Glenn Simmon, attorney for petitioners, continued by Messrs. Paul M. DeHart pro se No. 7779 and Harry R. Turkel, attorney for respondent in No. 7780, and concluded by Mr. Glenn Simmon, attorney for petitioners.

[fol. 21] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7779

DISTRICT OF COLUMBIA, Petitioner,

v.

PAUL M. DEHART

Petition to Review the Decision of the Board of Tax Appeals for the District of Columbia

Decided March 24, 1941

Richmond B. Keech, Corporation Counsel, Vernon E. West, Principal Assistant Corporation Counsel, and Glenn Simmon, Assistant Corporation Counsel, all of Washington, D. C., for petitioner.

Paul M. DeHart, pro se.

By leave of Court, Phineas Indritz filed a brief as amicus curiae.

Before Stephens, Miller and Vinson, Associate Justices

MILLER, Associate Justice:

The question presented on this appeal from a decision of the Board of Tax Appeals, in favor of respondent DeHart, is whether he is entitled to a refund of income tax paid to the District of Columbia for the year ending December 31, 1939, in the amount of $16.36. The pertinent language of the applicable statute reads as follows: [1]

Tax on Individuals.—There is hereby levied for each taxable year upon the taxable income of every individual *domiciled* in the District of Columbia on the last day of the taxable year a tax at the following rates: * * * [Italics supplied]

In the case of Sweeney v. District of Columbia,[2] this court decided that the controlling consideration in determining the domicil of a person engaged in government service in the District of Columbia is found not in length or definiteness of term, nor in election as against appointment, nor in any compulsion peculiar to military men, but in the fact that federal duty requires residential presence in the Dis- [fol. 22] trict, upon the part of all who must come and remain here to do the work of the government. Accordingly, we held that one who comes to the District and remains to render service to the government which requires his presence here, may retain his domicil in the state from which he comes until the service terminates, unless he gives clear evidence of his intention to forego his state allegiance; that the presumption of continuity of state domiciliation would require strong evidence to overcome it; that mere proof of long residence in the District, or ambiguous showing of intention to change, would be insufficient for this purpose; but that, instead, evidence of intention to

[1] Section 2 (a) of the District of Columbia Income Tax Act (Act of July 26, 1939, 53 Stat. 1087, D. C. Code (Supp. V, 1939) tit. 20, § 980a).

[2] —— App. D. C. ——, 113 F. (2d) 25, cert. denied, 310 U. S. 631.

change domicil must be clear and unequivocal. An examination of the legislative history of the Act involved in the present case clearly reveals Congressional intent that the same result should be reached in its administration.[3]

This, therefore, is the established law of the District of Columbia; as both parties agree. The District has prosecuted its appeal to determine, however, whether the facts of the present case bring it within the law as thus declared. The Board of Tax Appeals found, among other things, that respondent DeHart for several years last past has been and still is residing in the District of Columbia; he is in the Civil Service of the United States as Chief Clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington, D. C.; he was born and reared in Pennsylvania and resided there [fol. 23] until 1914, when he came to the District of Columbia; his parents continue to reside at 1932 North Fourth Street, Harrisburg, in which premises respondent's room is maintained intact and in which room some of his clothes and his childhood toys are kept; he claims these premises as his "legal residence;" he pays no sum as rent or for lodging, but makes monetary presents to his parents from time to time; he visits his parents' home over week ends at least eight times a year, and has been there between

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[3] Senator Overton, Chairman of the subcommittee of the Committee on Appropriations for the District of Columbia and Chairman of the Senate Conference on the bill, in presenting the Conference report said, on the floor of the Senate [84 Cong. Rec., July 11, 1939, 12347]: "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and all Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia."

Mr. Nichols, Chairman of the Committee on the District of Columbia, in submitting the Conference report and

Christmas and New Year of each year; he is, and has been since he came of age, a registered voter in Pennsylvania, and has voted in all general elections there during that period; he paid the Pennsylvania poll tax each year until the repeal of the poll tax law, and since that time has annually paid the Pennsylvania occupational tax; he expects retirement in four years and intends to leave Washington at that time. The Board found, also, a number of facts concerning respondent's attachments in Washington, D. C., including marriage to a native of Washington; purchase and occupancy of a home in Washington; an agreement with his wife, prior to her death in 1935, that upon retirement they would spend six months at Selby-on-the-Bay, in Maryland, where he purchased an unimproved lot for a future summer residence; bank accounts in Washington institutions; church and lodge memberships and contributions for charitable purposes in Washington; and filing of federal income tax returns in Baltimore, Maryland. Finally,

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statement, on the floor of the House said [84 Cong. Rec., July 12, 1939, 12529]: "Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read: 'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights. * * * There must exist in combination the fact of residence and animus manendi — ' which means residence and his intention to return; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."

On the same day, Mr. Bates, one of the conferees on the part of the House, during the debate, said on the floor of the House [84 Cong. Rec., July 12, 1939, 12528]: "That particular point that my colleague from Massachusetts raises was made very pointedly in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also."

the Board found that at the end of one year after he removed to the District of Columbia, respondent had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that this intention "remained with him at least until the death of his wife."

Upon the basis of its findings, and upon the authority of the Sweeney case, the Board concluded that the respondent was not domiciled in the District of Columbia; hence that the tax paid by him was erroneously paid and must be refunded. The record contains no transcript of the evidence and the findings are unchallenged. The Board of Tax Appeals, in our view, correctly decided that the reasoning of the Sweeney case is conclusive of the issue presented here, and correctly held that respondent was not domiciled in the District of Columbia on December 31, 1939, the taxable date.

Affirmed.

[fol. 24] Monday, March 24th, A. D. 1941.

* * * * * * *

No. 7779, January Term, 1941

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART

Petition for review from the Board of Tax Appeals for the District of Columbia.

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals for the District of Columbia and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Miller, March 24, 1941.

* * * * * * *

[fol. 25] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 1, 1941. Joseph W. Stewart, Clerk.

In the United States Court of Appeals for the District of Columbia, April Term, 1941

No. 7773

District of Columbia, Petitioner,

v.

Paul M. DeHart, Respondent

Designation of Record

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court for the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

Richmond B. Keech, Corporation Counsel, D. C. Vernon E. West, Principal Assistant Corporation Counsel, D. C. Glenn Simmon, Assistant Corporation Counsel, D. C., Attorneys for Petitioner, District of Columbia.

Service of a copy of the foregoing designation of record acknowledged this 1st day of April, 1941.

Paul M. DeHart, Respondent.

[fol. 26] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone and Mr. Justice Roberts took no part in the consideration and decision of this application.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. [illegible]

DISTRICT OF COLUMBIA,

Petitioner,

vs.

PAUL M. DeHART,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
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District Building.

CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.

DISTRICT OF COLUMBIA,

Petitioner,

vs.

PAUL M. DEHART,

Respondent.

PETITION FOR A WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

PETITION

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto Your Honors that:

STATEMENT OF MATTER INVOLVED

The District of Columbia Income Tax Act imposes a tax upon the income of individuals domiciled in the District of Columbia on the last day of the taxable year. The respondent paid to the District of Columbia an income tax for the cal-

endar year 1939. At the time of payment of such tax respondent filed with the Assessor, D. C., a claim for refund of the amount paid, in which claim it was alleged that the respondent was domiciled in Harrisburg, Pennsylvania, on December 31, 1939. On July 22, 1940, the Assessor disallowed the claim and sent the respondent, by registered mail, a notice of such disallowance. On August 28, 1940, the respondent appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia (R. 1-2). On October 9, 1940, the Board of Tax Appeals held that the respondent was not domiciled in the District on the taxable date involved, that the tax was erroneously collected by the District, and the respondent was entitled to a refund thereof (R. 12).

The District petitioned the United States Court of Appeals for the District of Columbia for a review of the decision of the Board of Tax Appeals. On March 24, 1941, the Court of Appeals affirmed the decision of the Board of Tax Appeals (R. 20-24).

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the domicile of a federal employee is to be determined upon different principles of law than those applicable to the determination of domicile of an individual engaged in private employment;

2. Whether there is a presumption requiring strong evidence to overcome it that an employee of the Federal Government residing in the District of Columbia is domiciled in the state where he formerly resided;

3. Whether the domicile of a federal employee residing in the District of Columbia is to be determined upon different principles of law than those used in determining the domicile of such an employee residing in one of the states;

4. Whether respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The United States Court of Appeals for the District of Columbia in this case has decided a question of general importance which has not been, but should be, settled by this Court.

(a) The question is of great importance to the District of Columbia for the reason that the District of Columbia Income Tax Act levies a tax upon the income of individuals "domiciled" in the District, and, because the District of Columbia Estate Tax Law imposes a tax upon the transfer of the estate of every individual who shall die a resident of the District.

(b) The question is of great importance to all employees of the Federal Government residing in the District and to other government employees residing in a jurisdiction other than the state or territory of original domicile. In such cases, the importance of the question is not limited to liability for payment of taxes but extends to matters relating to the administration of estates, the granting of divorces, and the like.

(c) The question is of great importance to persons who have come from the various states and are residing in the District and engaged in private employment.

2. The Court of Appeals has not given proper effect to applicable decisions of this Court.

WHEREFORE, Your petitioner prays the allowance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia in this cause, and entitled *District of Columbia, Petitioner* v. *Paul M. DeHart, Respondent*, No. 7779,

that said cause may be reviewed and determined by th
Court, and that the judgment of the said Court of Appea
may be reversed and set aside; and for such further reli
and remedy in the premises as this Court may deem meet an
proper.

DISTRICT OF COLUMBIA,
Petitioner.

By:
RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,
District Building.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-12) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 20-24) is not yet reported.

JURISDICTION

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT OF THE CASE

Pursuant to the provisions of the District of Columbia Income Tax Act imposing taxes upon the income of individuals domiciled in the District on the last day of the taxable year, respondent reported his income for the calendar year 1939 and paid the tax computed thereon. Simultaneously with such payment, the respondent filed a claim for refund of the amount paid, alleging that he was not domiciled in the District on the taxable date. On July 22, 1940, the Assessor, D. C., notified respondent of the disallowance of his claim. On August 28, 1940, the respondent, acting in accordance with the provisions of Section 34 of the District of Columbia Income Tax Act (Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V), appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia.

In 1914 the respondent took a year's leave of absence from his work in a railroad office and accepted a clerical position in

the Patent Office in Washington under Civil Service. Respondent did not return to the railroad office at the end of the year but continued in the Civil Service up to and including the present time. He is now chief clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington (R. 4, 5).

When respondent came to Washington in 1914 he was a single person. In 1917 he was married to a native of Washington. No children resulted from such union. Shortly after the marriage, the couple purchased as a home premises 1426 Massachusetts Avenue, S. E., in Washington, wherein they both resided as long as the wife lived and in which the respondent has since resided. When first purchased, the home was encumbered by a mortgage which the respondent subsequently paid off (R. 5).

Respondent's wife died in 1935. While she was living, the respondent purchased an unencumbered lot at Selby-on-the-Bay, in nearby Maryland, and an unencumbered lot in Hillcrest, a subdivision in the District of Columbia. Respondent and his wife had an agreement that a new home would be built on the Hillcrest lot in southeast Washington and a summer residence would be built at Selby-on-the-Bay, and, after his retirement from Government service, six months of the year would be spent at their home in the District and six months at their summer home on the Bay (R. 5, 6).

Respondent has checking or savings accounts in three District banking institutions and owns first trust notes on property located in Maryland and Virginia (R. 7).

Respondent has been an active member of the Keller Memorial Lutheran Church of Washington, D. C., since 1915. He is also a member of the Washington units of the Tall Cedars of Lebanon and the Mystic Shrine, both Masonic bodies, as well as the Motor Club of Washington. Prior to his wife's death, the respondent was a member of the Pennsylvania Society of Washington. During the calendar year 1939

He made substantial contributions to religious and charitable institutions in the District (R. 7).

Respondent was born in Pennsylvania where he resided until he came to the District in 1914. Respondent's parents reside at 1933 North Fourth Street, Harrisburg, Pennsylvania, at which premises he retains a room and claims "legal residence". Respondent pays no rent for such room but he does make monetary gifts to his parents from time to time (R. 7, 8).

Respondent has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While he resided in Harrisburg, he was a member of a church and of Masonic lodges there. While on visits to Harrisburg, he attends and makes contributions to the Pine Street Presbyterian Church (R. 8).

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him at least until the death of his wife in 1935 (R. 9). The Board, however, held that under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia* [1], the respondent was not domiciled in the District of Columbia on December 31, 1939 (R. 9-12).

The Court of Appeals sustained the Board's finding that the respondent had an intention to remain and make his home in the District and affirmed the Board's decision that he was, nevertheless, domiciled without the District.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia erred:

I. In holding that the respondent was not domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

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[1] ____ App. D. C. ____, 113 F. (2d) 25, cert. den. 310 U. S. 631.

II. In holding that the domicile of an individual employed by the Government is to be determined upon different principles of law than those applicable to the determination of the domicile of an individual engaged in private employment.

III. In holding that there is a presumption, requiring strong evidence to overcome it, that an individual who comes to the District from one of the states and resides here for many years while employed permanently or indefinitely by the United States Government retains his domicile for all purposes in the state from which he comes.

IV. In holding that an individual who has physically removed to the District and has an intention to remain and make his home here indefinitely nevertheless retains his domicile for all purposes in the state where he formerly resided because of his employment by the Federal Government.

STATUTES INVOLVED

Section 2 (a) of the District of Columbia Income Tax Act (Sec. 980a., Title 20, D. C. Code, 1929, Supplement V) provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

* * * *

SUMMARY OF ARGUMENT

Conjunction of physical presence and animus manendi in the new location establishes a change of domicile.

There is no question concerning the respondent's physical presence in the District of Columbia.

The question of intention to remain in the District is one of pure fact. The Board of Tax Appeals found as a fact that

the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time. The Court of Appeals sustained the Board's finding. Domicile in the District follows as a matter of law.

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

A person is presumed to be domiciled at the place where he lives.

Even if the test laid down by the Court of Appeals in the Sweeney case [2] were applicable, the evidence clearly shows that respondent here was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

ARGUMENT

I

Respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

In 1914, the respondent came to reside in the District of Columbia. Since that time he has had no home or dwelling place except the one which he has continuously maintained in the District. When a person has one home and only one home, his domicile is the place where his home is. *Restatement, Conflict of Laws*, Chapter 2, Section 12, Page 24.

Domicile is defined in 9 *R. C. L.* 538 as follows:

> "The term 'domicile' in its ordinary acceptation means a place where a person lives or has his home. In a strict legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is

[2] App. D. C. ..., 113 F. (2d) 25, cert. den. 310 U. S. 631.

> absent, the intention of returning. In a sense domicile is synonymous with home, or residence, or 'the house of usual abode'."

See also:

Texas v. *Florida*, 306 U. S. 398;

Jacobs, Law of Domicile, Section 70, Page 113, and Section 72, Page 120;

Kennan on Residence and Domicile, Section 16, Page 37;

Goodrich on Conflict of Laws, Section 25.

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time (R. 9). The Board's findings were accepted by the Court of Appeals (R. 24) and domicile in the District of Columbia follows as a matter of law.

In *Story, Conflict of Laws*, Section 46, the rule is stated as follows:

> "If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is deemed to be his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

The rule announced by Story seems to have been almost universally adopted.

Gilbert v. *David*, 235 U. S. 561;

Mitchell v. *United States*, 21 Wall. 350, 22 L. Ed. 584;

Rosenberg v. *Comm. of Internal Revenue*, 59 App. D. C. 178, 37 F. (2d) 808;

Newman v. *United States Ex Rel. Frizzell*, 43 App. D. C. 53;

Bradstreet v. *Bradstreet*, 18 D. C. Rep. (7 Mackey) 229;

Ringgold v. *Barley*, 5 Md. 186, 59 Am. Dec. 107;
Klutts v. *Jones*, 21 N. Mex. 720, 158 P. 490, L.R.A. 1917A 291;
Felker v. *Henderson*, 102 A. (N. H.) 623, L.R.A. 1918E 512;
Kennan on Residence and Domicile, Section 127, Page 257.

The intention, however, to return to the domicile of nativity, or one acquired, must be fixed, absolute, and unconditional. A mere floating intention to return at some future period or upon the happening of some uncertain event is not sufficient. The intent to return must not depend upon inclination or be controlled by future events.

Sparks v. *Sparks*, 114 Tenn. 666, 88 S. W. 173, 174.
Story, Conflict of Laws, Section 46.

The Court of Appeals, in the *Sweeney* case, apparently affirmed the rule that conjunction of physical presence and *animus manendi* establishes a change of domicile to the new location. However, in the instant case where there was both physical presence and intention to remain in the District, the Court of Appeals held the respondent to be domiciled in Pennsylvania. The evidence clearly shows that at least until the death of his wife in 1935, the respondent had an intention to remain and make his home in the District until and after his retirement from Government service. There is no proof that such intention does not still remain with the respondent except his declaration to the contrary made while he was testifying in his own behalf in this proceeding before the Board of Tax Appeals. Such declarations are, at best, self-serving, and are entitled to little, if any, weight. *Texas* v. *Florida*, *supra*; *Rosenberg* v. *Comm. of Internal Revenue*, *supra*; 19 *C.J.* 440, 9 *R.C.L.* 558. Even assuming that after the death of his wife in 1935, respondent did change his intention to remain in the District after his retirement, such change of intention could not effect a change of domicile in the absence of physical removal to Pennsylvania.

It seems evident that respondent did not intend to retain his domicile in Pennsylvania. The intention required for the

acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. *Restatement, Conflict of Laws*, Chapter 2, Section 19, Page 38. See also: *Mitchell* v. *United States, supra; Texas* v. *Florida, supra.* The nature of the intention required for the acquisition of a domicile of choice is clearly pointed out by Mr. Justice Holmes in the case of *Dickinson* v. *Inhabitants of Brookline*, 181 Mass. 195, 63 N.E. 331, as follows:

> "Of course the argument for the plaintiff is that his domicile is presumed to continue until it is proved to have been changed, that it could be changed only by his intent and overt act, and that he expressly denied the intent. The ambiguity is in the last proposition. The plaintiff did not deny that he intended to keep on living as he had lived for the last few years and if the jury saw fit to find, as no doubt they did, that he did intend to do so, then he did intend the facts necessary to constitute a change in domicile, and what he did not intend was simply that those facts should have their inevitable legal consequence."

See also: *Jacobs, Law of Domicile*, Section 148, Pages 213-215.

Respondent also testified that he has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While exercise of the elective franchise is important to be considered, as a general rule it is not conclusive, and when overbalanced by other circumstances, the fact of voting may be of slight importance. 19 *C. J.* 436, 437.

See also:

Gaddie v. *Mann*, 147 F. 955;
Bradstreet v. *Bradstreet, supra;*
In re Sedgwick, 223 F. 655;
In re Trowbridge's Estate, 266 N. Y. 283, 194 N. E. 756;

Dickinson v. *Inhabitants of Brookline, supra;*
Wagner v. *Scurlock*, 166 Md. 284, 170 A. 539, 542;
Kennan on Residence and Domicile, Section 78, Pages 158-161;
Wharton, Conflict of Laws, Section 63.

In considering the question of the domicile of one who has removed from one state to another, the fact that the right of suffrage has been exercised in the former state is entitled to much greater weight than when considering the domicile of one who has removed from a state to the District of Columbia. Ordinarily one wishes to take part in the political activities of the state in which he intends to live and therefore when one continues to vote in the state of his former residence this may create a presumption of a fixed intention to return to that state. But the right of suffrage is denied residents of the District. It is but natural that one who removes from a state to the District with the intention of remaining here permanently should, nevertheless, endeavor to retain his right of suffrage as long as possible. It may be that, under the law of Pennsylvania, a former resident of that state may continue to exercise a right of suffrage there until he has actually voted elsewhere. That question, however, is not before this Court. But, in any event, it is plain that the State of Pennsylvania cannot accord a domicile in that State to a resident of the District of Columbia merely by permitting him to vote in its elections.

Unless the domicile of an individual employed by the Federal Government is to be determined upon principles of law different from those used in determining the domicile of an individual in private employment, it clearly appears that the argument that respondent was domiciled in the District of Columbia on the date in question is supported by substantially all authority, including opinions of this Court. The opinion of the Court of Appeals, however, departs from the well-defined principles for determining domicile in three respects: First, by placing Government employees in a special class and holding that the domicile, for purposes of taxation, of an indi-

vidual so employed is to be determined upon different principles of law than those applicable to the determination of the domicile of other individuals. Second, by holding that a person who voluntarily comes to the District and obtains employment here with the Federal Government is presumed to be domiciled in the state from which he comes and that strong evidence is required to overcome such presumption. Third, by holding that a Government employee maintaining his only home in the District and having an intention to remain and make his home here indefinitely is, nevertheless, domiciled for all purposes in the state where he formerly resided.

II

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

The Court of Appeals has held that different rules are to be used in determining the domicile, for purposes of taxation, of an employee of the Federal Government than those used in determining the domicile of an individual in private employment. The Court has not only failed to recognize a distinction between *civil* and *political* status but has held that the latter determines the former. In other words, the Court has said that the personal rights of an individual in Government employment, i.e., the law which determines his majority or minority, his marriage, succession, testacy or intestacy, and the like, depends not upon the place where he lives and has his home but upon the place where he formerly resided and acquired the right to vote. Whether an individual who has abandoned his residence in a state and accepted Federal employment and established residence in the District of Columbia may continue to retain a political status in the state where he formerly resided is a matter to be determined by the laws of such state. The laws of most states allow persons in Government service to continue to vote in the elections of such states. Since an individual has no political status in the Dis-

trict of Columbia it is proper and desirable that he be allowed to retain his citizenship or *political* domicile in the state of his former residence. There is, however, no corresponding reason why an individual residing permanently, or at least indefinitely, in the District of Columbia should have a *civil* status or domicile for all purposes in a state where he may never again reside, and it does not appear that the state laws generally accord such a status or domicile to individuals who have been absent therefrom for long periods in Government service.[3] And the fact that such individuals retain their *political* status and continue to vote in their respective states of former residence is not inconsistent with the fact that they acquire a *civil* status in the District of Columbia where they live, enjoy the benefits and protection of local government, by the laws of which District their personal rights should be determined and in which place they are legally domiciled.[4]

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[3] In *Sparks* v. *Sparks*, 114 Tenn. 666, 88 S. W. 173, one who took his family to Washington and lived there 22 years was held to have lost his citizenship, residence and domicile in Tennessee although he occasionally returned to that state and had voted and paid taxes there and had repeatedly expressed his intention of returning to that state in case he should lose his position.

[4] There is a clear distinction between citizenship, on the one hand, and residence or domicile on the other. *Kennan on Residence and Domicile*, Section 62, Pages 136-137, citing among others the case of *Brown* v. *United States*, 5 C. Cls. 571, 579, wherein the Court stated: "We cannot accept the doctrine that the matter of domicile affects the fact of citizenship nor that a mere foreign residence, of itself, can work a forfeiture of political rights."

"Both residence and domicile have to do with a certain set of relations between a person and a place, while citizenship is based upon one's political status which is quite a different thing." *Kennan on Residence and Domicile*, Section 61, Page 135.

"Allegiance and domicile are entirely distinct things. They may exist apart; they may exist together; but the one does not necessarily involve the other." *Jacobs, Law of Domicile*, Section 144, Pages 208, 209.

The distinction is clearly drawn in *Shaeffer* v. *Gilbert*, 73 Md. 66, 20 A. 434, where it is said:

"But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's civil status and the rights of persons and property are determined, and residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile', in a legal sense, has, as we all know, a fixed and definite meaning; and yet the word 'domicile' is nowhere to be found in the Constitution. * * * The framers of the Constitution were dealing with the question of residence for political purposes, which, although analogous in many respects, is not to be understood in the same sense as domicile in law, by which the rights of persons and property are governed."

In imposing the income tax upon individuals domiciled in the District, Congress apparently recognized that domicile in the District for purposes of taxation is independent of the right to vote in one of the states.[5]

The Court of Appeals' ruling does not purport to have application to all persons in the District but is limited to employees of the Federal Government. Apparently, the Court does not intend that its ruling should have application to all employees of the Federal Government, but should be limited to such employees residing in the District of Columbia. There would appear to be no logical argument supporting a special rule regarding employees of the Federal Government which applied to only a limited number of such individuals. Any special

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[5] Mr. Nichols, the chairman of the House conferees on the bill, was absent from the conference and the Conference Report and explanation of the bill was made by Mr. Dirksen, a member of the Fiscal Affairs Subcommittee of the House District Committee and one of the conferees. In the course of such report to the members of the House of Representatives there occurred a discussion of the meaning of the term "domiciled" as used in the bill, wherein Mr. Dirksen stated his own views and those of the conferees as follows (84 Cong. Rec., July 12, 1939, 12528):

Mr. Dirksen: * * * I think one can have a taxable domicile in the District of Columbia and still preserve his voting rights back home.

* * * * * *

Mr. McCormack: I think this is a point that should be cleared up. Suppose a person comes from Boston, and the same thing applies to any other city in the country or any other State like Massachusetts, and his yearly employment is in the District of Columbia. He is living here all the year, but he registers for voting purposes in Massachusetts. He cannot vote here and we all know the reasons why, but he wants to exercise his right of suffrage and if he registers in Massachusetts, does he still have to pay the income tax here?

Mr. Dirksen: That precise question was raised in the course of the conference.

(Here the gavel fell.)

Mr. Nichols: Mr. Speaker, I yield the gentleman 5 additional minutes.

Mr. Dirksen: I will say to the gentleman from Massachusetts that I raised that precise question in the course of the conference. We had it up at considerable length with all the tax advisers to this committee, as well as the conference committee, and we were of the opinion you could be taxed here, and yet you can vote back home because you have a taxable domicile in the District. It does not interfere with your right, if you pay your poll tax in Massachusetts, to vote back there and still pay your income tax here. The situation the gentleman alludes to might very conceivably arise in connection with the case of a family that has lived here for 20 or 30 years. They continue to vote back there; but is there any reason why it should not be held that they have a taxable domicile in the District of Columbia since this is the place where they live?

rule for determining the domicile of Federal employees should apply to all such employees alike. Certainly it is not reasonable that the thousands of Federal employees residing in nearby Virginia and Maryland must have their domiciles determined on a different basis than those Federal employees residing in the District.

There are more than 1,151,000 civil employees of the United States, of which number approximately 159,000 are employed in the District. Many of those employed in the District reside in nearby Maryland and Virginia. The rule laid down by the Court of Appeals necessarily affects all Federal employees who have removed from the jurisdiction of original domicile for the purpose of such employment, and the already perplexing problem of determining domicile is thereby further complicated for a substantial number of these 1,151,000 Federal employees.

There is no rule of law which supports the view that domicile or civil status of an individual employed by the United States is to be determined by special rules not applicable to individuals in private employment. The respondent here, like substantially all Government employees, was under no more compulsion to live in the District than an employee of a corporation or other employer. Such individuals are not under real compulsion such as are soldiers, prisoners, minors and lunatics. Respondent came to the District voluntarily to seek employment and has remained here through preference for more than 26 years and intends to remain here and make the District permanently his home. Although he may elect to retain his citizenship and vote in the State of Pennsylvania, he is, nevertheless, domiciled in the District for purposes of taxation.

III

A person is presumed to be domiciled at the place where he lives.

Where a person lives is taken *prima facie* to be his domicile, and the burden of disproving such domicile is on the person who denies it.

Anderson v. *Watt*, 138 U. S. 694;
Ennis v. *Smith*, 14 How. 400, 423;
Newman v. *United States ex rel. Frizzell, supra;*
Bradstreet v. *Bradstreet, supra;*
Gallagher v. *Gallagher* (Tex. Civ. App.), 214 S. W. 516;
Dodd v. *Dodd* (Tex. Civ. App.), 15 S. W. (2d) 686;
Harrison v. *Harrison*, 117 Md. 607, 84 A. 57;
9 *R. C. L.* 541, 557;
Restatement, Conflict of Laws, Chap. 2, Sec. 12, Page 24;
Story, Conflict of Laws, Sec. 46, Page 50;
Kennan on Residence and Domicile, Section 172, Page 327;
Dicey, Law of Domicile, Page 9.

In the case of *Sweeney* v. *District of Columbia, supra*, the Court of Appeals held that although there was a presumption of continuity of state domiciliation during Federal employment, such presumption could be overcome. In the instant case, the Board of Tax Appeals held that the respondent had an intention to remain and make his home in the District. The Court of Appeals sustained the Board's finding of intention to remain, but, nevertheless, held respondent to be domiciled without the District. The effect of the Court's ruling in the case at bar is that the alleged presumption cannot be overcome; in other words, that the domicile of an individual in Government service in the District of Columbia is to be determined not by the facts but solely by his statements as to the place of his domicile.

CONCLUSION

It is therefore respectfully submitted that this case is one of general importance which should be decided by this Court and that a Writ of Certiorari should be granted and this Court should review the decision of the United States Court of Ap-

peals for the District of Columbia and finally reverse said decision.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 992

DISTRICT OF COLUMBIA,

Petitioner,

v.

PAUL M. DeHART

Respondent.

BRIEF FOR PETITIONER

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CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-12) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 20-24) is reported at 119 F. (2d) 449.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE

Pursuant to the provisions of the District of Columbia Income Tax Act imposing taxes upon the income of individuals domiciled in the District on the last day of the taxable year the respondent reported his income for the calendar year 1939 and paid the tax computed thereon. Simultaneously with such payment, the respondent filed a claim for refund of the amount paid alleging that he was not domiciled in the District on the tax date. On July 22, 1940, the Assessor, D. C., notified respondent of the disallowance of his claim. On August 28, 1940, the respondent, acting in accordance with the provisions of Section 34 of the District of Columbia Income Tax Act (53 Stat. 1103), Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V, appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia.

In 1914 the respondent took a year's leave of absence from his work in a railroad office in the State of Pennsylvania and accepted a clerical position in the Patent Office in Washington under Civil Service. Respondent did not return to the railroad office at the end of the year but continued in the Civil Service up to and including the present time. He is now chief clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington (R. 4, 5).

When respondent came to Washington in 1914 he was a single person. In 1917 he was married to a native of Washington. No children resulted from such union. Shortly after the marriage, the couple purchased as a home premises 142[illegible] Massachusetts Avenue, S. E., in Washington, wherein they both resided as long as the wife lived and in which the respondent has since resided. When first purchased, the home was encumbered by a mortgage which the respondent subsequently paid off (R. 5).

Respondent's wife died in 1935. While she was living, the respondent purchased an unencumbered lot at Selby-on-the-

Bay, in nearby Maryland, and an unencumbered lot in Hillcrest, a subdivision in the District of Columbia. Respondent and his wife had an agreement that a new home would be built on the Hillcrest lot in southeast Washington and a summer residence would be built at Selby-on-the-Bay, and, after his retirement from Government service, six months of the year would be spent at their home in the District and six months at their summer home on the Bay (R. 5, 6).

Respondent has checking or savings accounts in three District banking institutions and owns first trust notes on property located in Maryland and Virginia (R. 7).

Respondent has been an active member of the Keller Memorial Lutheran Church of Washington, D. C., since 1915. He is also a member of the Washington units of the Tall Cedars of Lebanon and the Mystic Shrine, both Masonic bodies, as well as the Motor Club of Washington. Prior to his wife's death, the respondent was a member of the Pennsylvania Society of Washington. During the calendar year 1939, he made substantial contributions to religious and charitable institutions in the District (R. 7).

Respondent was born in Pennsylvania where he resided until he came to the District in 1914. Respondent's parents reside at 1933 North Fourth Street, Harrisburg, Pennsylvania, at which premises he retains a room and claims "legal residence". Respondent pays no rent for such room but he does make monetary gifts to his parents from time to time (R. 7, 8).

Respondent has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While he resided in Harrisburg, he was a member of a church and of Masonic lodges there. While on visits to Harrisburg, he attends and makes contributions to the Pine Street Presbyterian Church (R. 8).

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that

such intention remained with him at least until the death of his wife in 1935 (R. 9). The Board, however, held that under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia* [1], the respondent was not domiciled in the District of Columbia on December 31, 1939 (R. 9-12).

The Court of Appeals sustained the Board's finding that the respondent had an intention to remain and make his home in the District, and affirmed the Board's decision that he was, nevertheless, domiciled without the District.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia erred:

I. In holding that the domicile of an individual employed by the Federal Government is to be determined upon different principles of law than those applicable to the determination of the domicile of an individual engaged in private employment.

II. In holding that an individual who has physically removed to the District of Columbia and has an intention to remain and make his home therein indefinitely nevertheless retains his domicile for all purposes in the state where he formerly resided because of his employment by the Federal Government.

III. In holding that the respondent was not domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

STATUTE INVOLVED

Section 2(a) of the District of Columbia Income Tax Act (53 Stat. 1087), Sec. 980a., Title 20, D. C. Code, 1929, Supplement V, provides as follows:

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[1] 72 App. D. C. 30, 113 F. (2d) 25, cert. den. 310 U.S. 631.

"TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

* * * *

SUMMARY OF ARGUMENT

Conjunction of physical presence and animus manendi in the new location establishes a change of domicile. There is no question concerning the respondent's physical presence in the District of Columbia. The question of intention to remain in the District of Columbia is one of pure fact. The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time. The Court of Appeals sustained the Board's finding. Domicile in the District follows as a matter of law.

The decision of the Court of Appeals is inconsistent with Congressional intent, lacks support of either law or logic, precludes the equitable distribution of the tax burden, and sanctions tax avoidance.

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment. Such individuals are under no more compulsion to work or reside in the District of Columbia than persons in private employment. Domicile in the District for purposes of taxation is not inconsistent with the right of Federal employees to vote in their respective states of former residence.

ARGUMENT

I

Respondent was clearly domiciled in the District of Columbia under traditional formula requiring conjunction of physical presence and animus manendi.

In 1914 the respondent came to reside in the District of Columbia. Since that time he has had no home nor dwelling place except the one which he has continuously maintained in the District. When a person has one home and only one home, his domicile is the place where his home is. *Restatement, Conflict of Laws*, Chapter 2, Section 12, Page 24; *Beale, Conflict of Laws*, Sec. 19.2.

Domicile is defined in 9 *R. C. L.* 538 as follows:

> "The term 'domicile' in its ordinary acceptation means a place where a person lives or has his home. In a strict legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. In a sense domicile is synonymous with home, or residence, or 'the house of usual abode'."

See also:

Texas v. *Florida*, 306 U.S. 398;

Beale, Conflict of Laws, Sec. 9.5;

Jacobs, Law of Domicile, Section 70, Page 113, and Section 72, Page 120;

Kennan on Residence and Domicile, Section 16, Page 37;

Goodrich on Conflict of Laws, Section 25.

Where a person lives is taken *prima facie* to be his domicile, and the burden of disproving such domicile is on the person who denies it.

Anderson v. *Watt*, 138 U.S. 694;
Ennis v. *Smith*, 14 How. 400, 423;
Newman v. *United States ex rel. Frizzell*, 43 App. D. C. 53;
Bradstreet v. *Bradstreet*, 18 D. C. Rep. (7 Mackey) 229;
Gallagher v. *Gallagher* (Tex. Civ. App.), 214 S.W. 516;
Dodd v. *Dodd* (Tex. Civ. App.), 15 S.W. (2d) 686;
Harrison v. *Harrison*, 117 Md. 607, 84 A. 57;
9 *R. C. L.* 541, 557;
Restatement, Conflict of Laws, Chap. 2, Sec. 12, Page 24;
Story, Conflict of Laws (8th Ed., 1883), Sec. 46;
Kennan on Residence and Domicile, Section 172, Page 327;
Dicey, Law of Domicile, Page 9.

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time (R. 9). The Board's findings were accepted by the Court of Appeals (R. 24) and domicile in the District of Columbia follows as a matter of law.

In *Story, Conflict of Laws* (8th Ed., 1883), Section 46, the rule is stated as follows:

> "If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is deemed to be his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

The rule announced by Story seems to have been almost universally adopted.

Gilbert v. *David*, 235 U.S. 561;
Mitchell v. *United States*, 21 Wall. 350, 22 L. Ed. 584;
Rosenberg v. *Comm. of Internal Revenue*, 59 App. D.C. 178, 37 F. (2d) 808;

Newman v. *United States ex rel. Frizzell, supra;*
Bradstreet v. *Bradstreet, supra;*
Ringgold v. *Barley*, 5 Md. 186, 59 Am. Dec. 107;
Klutts v. *Jones*, 21 N. Mex. 720, 158 P. 490, L.R.A. 1917A 291;
Felker v. *Henderson*, 102 A. (N.H.) 623, L.R.A. 1918E 512;
Beale, Conflict of Laws, Sec. 19.1;
Kennan on Residence and Domicile, Section 127, Page 257.

The intention to return to the domicile of nativity, or one acquired, must be fixed, absolute, and unconditional. A mere floating intention to return at some future period or upon the happening of some uncertain event is not sufficient. The intent to return must not depend upon inclination or be controlled by future events.

Sparks v. *Sparks*, 114 Tenn. 666, 88 S.W. 173, 174;
Story, Conflict of Laws (8th Ed., 1883), Section 46;
Cf. Beale, Conflict of Laws, Section 18.1.

The evidence in this case clearly shows that, at least until the death of his wife in 1935, the respondent had an intention to remain and make his home in the District until and after his retirement from Government service. There is no proof that such intention does not still remain with the respondent except his declaration to the contrary made while he was testifying in his own behalf in this proceeding before the Board of Tax Appeals. Such declarations are, at best, self-serving and are entitled to little, if any, weight. *Texas* v. *Florida, supra; Rosenberg* v. *Comm. of Internal Revenue, supra; Feehan* v. *Trefry*, 237 Mass. 169, 129 N.E. 292; 19 *C. J.* 440. 9 R.C.L. 558. Even assuming that after the death of his wife in 1935, respondent did change his intention to remain in the District after his retirement, such change of intention could not effect a change of domicile in the absence of physical removal to Pennsylvania.

It seems evident that respondent di' not intend to retain his domicile in Pennsylvania. The intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. *Restatement, Conflict of Laws*, Chapter 2, Section 19, Page 38. See also: *Mitchell* v. *United States, supra; Texas* v. *Florida, supra; Feehan* v. *Trefry, supra; Beale, Conflict of Laws*, Sec. 19.2. The nature of the intention required for the acquisition of a domicile of choice is clearly pointed out by Mr. Justice Holmes in the case of *Dickinson* v. *Inhabitants of Brookline*, 181 Mass. 195, 63 N.E. 331, as follows:

> "Of course the argument for the plaintiff is that his domicile is presumed to continue until it is proved to have been changed, that it could be changed only by his intent and overt act, and that he expressly denied the intent. The ambiguity is in the last proposition. The plaintiff did not deny that he intended to keep on living as he had lived for the last few years and if the jury saw fit to find, as no doubt they did, that he did intend to do so, then he did intend the facts necessary to constitute a change in domicile, and what he did not intend was simply that those facts should have their inevitable legal consequence."

See also:

Beale, Conflict of Laws, Sec. 19.2;

Jacobs, Law of Domicile, Section 148, Pages 213-215.

Respondent also testified that he has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While exercise of the elective franchise is important to be considered, as a general rule it is not conclusive, and when overbalanced by other circumstances, the fact of voting may be of slight importance. 19 *C. J.* 436, 437.

See also:

Gaddie v. *Mann*, 147 F. 955;
Bradstreet v. *Bradstreet*, *supra*;
In re Sedgwick, 223 F. 655;
In re Trowbridge's Estate, 266 N.Y. 283, 194 N.E. 756;
Feehan v. *Trefry*, *supra*;
Dickinson v. *Inhabitants of Brookline*, *supra*;
Wagner v. *Scurlock*, 166 Md. 284, 170 A. 539, 542;
Kennan on Residence and Domicile, Section 78, Pages 158-161;
Wharton, Conflict of Laws, Section 63.

In considering the question of the domicile of one who has removed from one state to another, the fact that the right of suffrage has been exercised in the former state is entitled to much greater weight than when considering the domicile of one who has removed from a state to the District of Columbia. Ordinarily one wishes to take part in the political activities of the state in which he intends to live and therefore when one continues to vote in the state of his former residence this may create a presumption of a fixed intention to return to that state. But the right of suffrage is denied residents of the District. It is but natural that one who removes from a state to the District with the intention of remaining here permanently should, nevertheless, endeavor to retain his right of suffrage as long as possible. It may be that, under the law of Pennsylvania, a former resident of that state may continue to exercise a right of suffrage there until he has actually voted elsewhere. That question, however, is not before this Court. But in any event, it is plain that the State of Pennsylvania cannot accord a domicile in that state to a resident of the District of Columbia merely by permitting him to vote in its elections.

Unless the domicile of an individual employed by the Federal Government is to be determined upon principles of law different from those used in determining the domicile of an individual in private employment, it clearly appears that the

argument that respondent was domiciled in the District of Columbia on the date in question is supported by substantially all authority, including opinions of this Court. The opinion of the Court of Appeals, however, departs from the traditional formula for determining domicile in two respects: First, by placing Government employees in a special class and holding that the domicile, for purposes of taxation, of an individual so employed is to be determined upon different principles of law than those applicable to the determination of the domicile of other individuals, and, second, by holding that a Government employee maintaining his only home in the District and having an intention to remain and make his home here indefinitely is, nevertheless, domiciled for all purposes in the state where he formerly resided.

II

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

The question here presented was first considered by the Court of Appeals in the case of *James J. Sweeney* v. *District of Columbia.*[2] Sweeney had paid intangible personal property taxes assessed against him by the District of Columbia for the fiscal years 1938 and 1939 and appealed from such assessments to the Board of Tax Appeals for the District of Columbia urging invalidity of the assessments for the reason that he was not domiciled in the District of Columbia on the tax dates. Sweeney, an employee of the Federal Government, had maintained his only home in the District of Columbia for more than 20 years, during which time he had paid poll taxes and voted regularly in the elections of Massachusetts, claiming as his "legal residence" the address of an apartment house where his mother had formerly lived but at which address

[2] 72 App. D.C. 30, 113 F. (2d) 25, cert. den. 310 U.S. 631.

neither he nor any member of his family had resided for some time prior to the dates involved. The Board of Tax Appeals found as a fact that at the time Sweeney came to the District of Columbia in 1919 and up to and including July 1, 1938, the last tax date involved, he had an intention to remain in the District of Columbia indefinitely and make the District his home for an indefinite period of time and that if he had any intention to remove from the District it was a floating or conditional intention to be in the future realized, if at all, upon his retirement from Government service, if that should occur before his death, or upon the happening of some other contingency. The Board then found as a matter of law that Sweeney was domiciled in the District of Columbia on the tax dates in question [3].

In reversing the Board's decision in the *Sweeney* case, the Court of Appeals affirmed the traditional formula which holds that conjunction of physical presence and *animus manendi* in the new location brings about a domiciliary change [4]. The Court did not hold this formula to be inapplicable to persons in Government service but said that in the case of such individuals residing in the District there is a presumption of continuity of state domiciliation (or privilege of retaining state domiciliation), which presumption could be overcome by strong evidence. The Court held that [5] "one who comes to the District and remains to render service to the Government which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intention to forego his State allegiance." The effect of the Court's decision in the *Sweeney* case seems to be that there was insufficient evidence to support the Board's finding of intention.

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[3] 68 W.L.R. 10; Prentice-Hall State and Local Tax Service, Vol. 1, Sec. 94,030.

[4] 113 F. (2d) 25, 28.

[5] 113 F. (2d) 25, 32.

In the instant case the Board of Tax Appeals found as a fact that the respondent "at the end of one year after he removed to the District of Columbia in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him at least until the death of his wife" (R. 9). The Board, however, held that it was required by the Court's decision in the *Sweeney* case to hold that respondent was not domiciled in the District of Columbia on the tax date here involved. In this case the Court of Appeals affirmed the Board's findings of fact, including the finding of intention to remain in the District. In affirming the Board's decision, the Court restated the rule announced in the *Sweeney* case that "The controlling consideration in determining the domicile of a person engaged in Government service in the District of Columbia is found, not in length or definiteness of term, nor in election as against appointment, nor in any compulsion peculiar to military men, but in the fact that Federal duty requires residential presence in the District, upon the part of all who must come and remain here to do the work of the Government" (R. 21). The Court of Appeals, in this case and the companion case of *District of Columbia* v. *Henry C. Murphy* [6], abandons all presumptions and formulae in determining the domicile of a Government employee residing in the District of Columbia and holds that the domicile of such an individual for all purposes is to be determined solely by his own statements without regard for the facts in individual cases. This rule appears to be independent of legal precedent and unsupported by reason.

Individuals are under no compulsion to accept Federal employment or reside in the District of Columbia.

Exceptions to the traditional formula that conjunction of physical presence and *animus manendi* in the new location

[6] 119 F. (2d) 451.

brings about a domiciliary change have been generally recognized in the case of persons under physical or legal compulsion, such as soldiers, sailors, and inmates of jails, and persons without the capacity to acquire a domicile of choice, such as infants, lunatics and married women. Exceptions in such cases are based on the inability of the individuals involved to exercise any power of choice in the matter [7]. Normally, individuals accepting employment with the Federal Government are under no more compulsion than individuals accepting private employment in the District of Columbia. Employees of transportation, communication, and various other corporations operating throughout the nation are subject to transfer just as are Government employees, and the compulsion to work in the District of Columbia or elsewhere is equally strong in either case.

Furthermore, neither the Government employee nor the person in private employment is compelled to reside within the District of Columbia. Residential presence in the District is no more required in the case of persons performing Federal duty than in the case of individuals practicing professions, trades, or engaging in industrial or other business activities in the District.

The Court of Appeals' ruling does not purport to have application to all persons in the District but is limited to employees of the Federal Government. Apparently, the Court does not intend that its ruling should have application to all employees of the Federal Government, but should be limited to such employees residing in the District of Columbia. There would appear to be no logical argument supporting a special rule regarding employees of the Federal Government which applies to only a limited number of such individuals. Any

[7] See:
Gallagher v. *Gallagher* (1919; Tex. Civ. App.), 214 S.W. 515;
Kinsel v. *Pickens* (1938; D. C.), 25 F. Supp. 455;
Harris v. *Harris*, 205 Iowa 108, 215 N.W. 661;
19 *C. J.* 410, et seq.

special rule for determining the domicile of Federal employees should apply to all such employees alike. Certainly it is not reasonable that the thousands of Federal employees residing in nearby Virginia and Maryland must have their domiciles determined on a different basis than those Federal employees residing in the District.

Government employees residing in the District of Columbia are not taxable in their respective states of former residence upon income earned in the District.

In its opinion in the *Sweeney* case the Court of Appeals takes the view that its holding that Government employees are not domiciled in the District of Columbia subjects such individuals to taxation in the respective states where they formerly resided, and that such individuals are not, therefore, legally or morally, placed in a preferred position and that no unjust discrimination between such individuals and non-Government employees results. This view is stated by the Court without reference to the various state taxing statutes and apparently without consideration of the basic theory of taxation.

Thirty-four states tax individual income. The laws of three of such states tax only the income from certain intangibles and are clearly applicable only to individuals actually residing within the respective states [8]. In the thirty-one states im-

[8] Ohio imposes a tax upon intangibles which, in the case of income-producing investments, is measured upon the annual yield therefrom. Only persons having an actual place of abode in the State for a period of more than six months of the tax year are liable for the tax. See Ohio Corporation Tax Service, Par. 20-708.

Tennessee has a special income tax on interest and dividends, imposed upon individuals "in" Tennessee. Domicile, for purposes of liability to the tax, is construed by the administrative officials and courts to mean "actual residence" in the State. See Tennessee Corporation Tax Service, Par. 15-101 and citations thereunder.

Laws of New Hampshire impose taxes upon the income from certain intangibles of individuals who are inhabitants or residents of the State on January 1 in any year and on individuals who ceased to be residents of the State during the preceding calendar year on such part of the year as they were residents of the State. See New Hampshire Corporation Tax Service, Par. 9175-2

posing taxes upon the net income of individuals, such taxes apply to "residents", persons "residing within", or "inhabitants" of the respective states. In substantially all cases, these terms are defined, either by law or regulation, to include individuals domiciled within the respective states. In four of such states, the term "domiciled" is specifically limited to persons actually residing within such states [9]. The laws and

[9] The California income tax law provides that: "Every natural person who is in the State of California for more than a temporary or transitory purpose is a resident and every natural person domiciled within this State is resident unless he is a resident within the meaning of that term as herein defined of some other State, Territory or country." Article 2(k)-1 of the California regulations provides that: "Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be domiciled in this State without being a resident. The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws, and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are physically present in some other state or country for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and government of this State." See California Corporation Tax Service, Par. 15-047.

Article 15-1 of regulations issued by the State Tax Commission of Idaho provides "Residence is defined as an act or fact of abiding or dwelling in a place for some time. Residence is not domicile." See Idaho Corporation Tax Service, Par. 1494f. H.B. 294, Laws of 1941, amends Sec. 61-2412 of the Idaho Code by adding Paragraph (7), which excludes the income of resident persons derived from salaries, wages or compensation for personal service, or from the conducting and carrying on of their professions, vocations, trades, or businesses, when derived from sources outside of the State of Idaho (effective March 7, 1941). See Idaho Corporation Tax Service, Par. 10295h.

Article 105 of regulations pertaining to the Wisconsin income tax law contains language identical to that above quoted from the Idaho regulations. Decisions cited following paragraph 10-110 of the Wisconsin Corporation Tax Service clearly show that Wisconsin courts consider individuals taxable only to the extent that they actually reside within the State during the taxable year.

Paragraph 7 of Section 350 of the personal income tax law of the State of New York provides that "The word 'resident' applies only to natural persons and includes any person domiciled in the state, except a person who, though domiciled in the state, maintains no permanent place of abode within the state, but does maintain a permanent place of abode without the state, and who spends in the aggregate not to exceed thirty days of the taxable year within the state." See New York Corporation Tax Service, Par. 15-014.

regulations of three additional states apparently limit the imposition of the tax to individuals actually residing within such states [10]. The courts of Massachusetts apparently consider that domicile for purposes of taxation means actual residence, or "home for the general purposes of life" [11]. Examination of the laws and regulations of the remaining twenty-three states discloses that in only one instance do such laws or regulations indicate an intention to extend the tax to individuals (either Government employees or others) having their homes and actually residing and earning their incomes without the state [12].

Any attempt to impose taxes upon income earned without the taxing jurisdiction by individuals residing without the jurisdiction and receiving no benefits or protection therefrom violates the fundamental principles of taxation. And in the vast majority of cases, such attempts can operate only upon volunteers [13]. In few cases does the state have jurisdiction over either the individual or any of his property and even if such a tax were valid, successful enforcement would be impossible.

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[10] See:
New Mexico Corporation Tax Service, Paragraph 1016q.
Colorado Corporation Tax Service, Paragraph 10-003.
Delaware Corporation Tax Service, Paragraph 90-801.

[11] See:
Pickering v. *City of Cambridge*, 144 Mass. 244, 10 N.E. 827;
Feehan v. *Trefry*, 237 Mass. 169, 129 N.E. 292.

[12] The Kentucky regulations attempt to tax the income of individuals in Government service without the State who claim domicile therein. See Kentucky Corporation Tax Service, Paragraph 10-016.

[13] In a letter dated December 10, 1940, the State Tax Commission of West Virginia states that no ruling has been promulgated with respect to liability of Federal employees residing in Washington to file income tax returns in the State of West Virginia although some such individuals have been advised that so long as they consider West Virginia as the place of their legal residence and domicile they should file returns with the State. See West Virginia Corporation Tax Service, Paragraph 10-055. In other words, the Commission declines to discourage willing contributors.

It therefore seems obvious that the rule laid down by the Court of Appeals is inconsistent with the tax laws of most of the states, and leads to confusion, tax avoidance, and discrimination.

Domicile in the District of Columbia is not inconsistent with political status in one of the states.

The Court of Appeals has not only failed to recognize a distinction between domicile or *civil* status and *political* status but has held that the latter determines the former. In other words, the Court has said that the personal rights of an individual in Government employment, i.e., the law which determines his majority or minority, his marriage, succession, testacy or intestacy, and the like, depends not upon the place where he lives and has his home but upon the place where he formerly resided and acquired the right to vote. Whether an individual who has abandoned his residence in a state and accepted Federal employment and established residence in the District of Columbia may continue to retain a political status in the state where he formerly resided is a matter to be determined by the laws of such state. The laws of most states allow persons in Government service to continue to vote in the elections of such states. Since an individual has no political status in the District of Columbia it is proper and desirable that he be allowed to retain his citizenship or *political* status in the state of his former residence. This privilege is generally granted to all persons in Government service whether residing in the District of Columbia or not [14]. There is, however, no corresponding reason why an individual residing permanently or at least indefinitely, in the District of Columbia should have a *civil* status or domicile for all purposes in a state where he may never again reside, and it does not appear that the state laws generally accord such a status or domicile to individuals who have been absent therefrom for long periods in Govern-

[14] *Campbell* v. *Ramsey* (Kans., 1939), 92 P. (2d) 819.

ment service [15]. And the fact that such individuals retain their *political* status and continue to vote in their respective states of former residence is not inconsistent with the fact that they acquire a *civil* status or domicile in the District of Columbia where they live, enjoy the benefits and protection of local government, by the laws of which District their personal rights should be determined and in which place they are legally domiciled [16].

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[15] In *Sparks* v. *Sparks*, 114 Tenn. 666, 88 S.W. 173, one who took his family to Washington and lived there 22 years was held to have lost his citizenship, residence and domicile in Tennessee although he occasionally returned to that state and had voted and paid taxes there and had repeatedly expressed his intention of returning to that state in case he should lose his position.

[16] There is a clear distinction between citizenship on the one hand, and residence or domicile on the other. *Kennan on Residence and Domicile*, Section 62, Pages 136-137, citing among others the case of *Brown* v. *United States*, 5 C. Cls. 571, 579, wherein the Court stated: "We cannot accept the doctrine that the matter of domicile affects the fact of citizenship nor that a mere foreign residence, of itself, can work a forfeiture of political rights."

"Both residence and domicile have to do with a certain set of relations between a person and a place, while citizenship is based upon one's political status which is quite a different thing." *Kennan on Residence and Domicile*, Section 61, Page 135.

"Allegiance and domicile are entirely distinct things. They may exist apart; they may exist together; but the one does not necessarily involve the other." *Jacobs, Law of Domicile*, Section 144, Pages 208, 209.

The distinction is clearly drawn in *Shaeffer* v. *Gilbert*, 73 Md. 66, 20 A. 434, where it is said:

"But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's civil status and the rights of persons and property are determined, and residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile', in a legal sense, has, as we all know, a fixed and definite meaning; and yet the word 'domicile' is nowhere to be found in the Constitution. * * * The framers of the Constitution were dealing with the question of residence for political purposes, which, although analogous in many respects, is not to be understood in the same sense as domicile in law, by which the rights of persons and property are governed."

Most Government employees remain in the District of Columbia after retirement.

At the hearing before the Board of Tax Appeals there was introduced in evidence, by stipulation, a statement, taken from a Report by the Statistical Division, United States Civil Service Commission, on Employment and Payrolls in the Executive Branch of the United States Government, published July 8, 1940, showing that on May 1, 1939, 13.59% of all persons employed in the Executive Branch of the Federal Government were so employed within the District of Columbia. This figure includes persons residing without the District, principally in nearby Maryland and Virginia. There also was included in the stipulation a statement, taken from the Retirement Report for the Fiscal Year Ended June 30, 1939, prepared by the Retirement Division, United States Civil Service Commission, showing that on May 1, 1939, 11.75% of all persons receiving annuities under the Civil Service Retirement Act were residing within the District of Columbia (R. 9). The number or percentage of active Federal employees residing in the District is not available, but if it is assumed that 16.5% of Federal employees working in the District reside without its boundaries, then the percentage of active Federal employees residing in the District is the same as the percentage of retired Federal employees residing in the District. These official figures strongly support the view that substantially all Federal employees continue to reside in the District after retirement from Government service.

III

Respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

Intention of Congress

The District of Columbia Income Tax Act was enacted as Title II of the District of Columbia Revenue Act of 1939. The

bill, as originally introduced and passed by the House of Representatives, provided for a tax upon both residents and nonresidents. [17] The bill was amended on the floor of the House so as to exempt from the income tax "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States". [18] This exemption provision was unacceptable to the Senate and it was agreed in conference that the tax should be levied upon "every individual domiciled in the District of Columbia on the last day of the taxable year". In reporting the action of the conferees to the Senate, Senator Overton, chairman of the Senate conferees, called attention to the fact that the individual income tax is imposed only on those domiciled in the District, and stated:

> "* * * It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and all Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia." [19]

Mr. Nichols, the chairman of the House conferees on the bill, was absent from the conference and the conference report and explanation of the bill to the House of Representatives was made by Mr. Dirksen, a member of the Fiscal Affairs Subcommittee of the House District Committee and one of the conferees. In the course of such report, the following discussion occurred on the floor of the House (84 Cong. Rec., July 12, 1939, 12527, 12528, 12529):

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[17] See H. R. 6577, 76th Congress, First Session.

[18] 84 Congressional Record 9892-9893.

[19] See 84 Congressional Record, July 11, 1939, 12347.

"MR. DIRKSEN. * * *

The very explosive and controversial item relative to the applicability of the tax was finally resolved when we wrote a provision in the conference bill to the effect that it applies only to those who are legally domiciled in the District of Columbia on the last day of the taxable year. This takes out Members of Congress, it takes out Senators, and it takes out the employees who come and go from Washington, making the tax applicable only to those who are domiciled in the District of Columbia on the last day of the taxable year. I believe this meets the great objection that was made to this bill in the first instance.

* * * *

' IR. MCCORMACK. Will the gentleman state what his understanding or intent or what the intent of the conference committee or the Congress is in that respect, taking the case, for instance, of an employee of the Federal Government, a civil-service employee, in the Department of Agriculture or any other department, for instance, who is employed steadily year after year. Could he register as his legal place of residence Massachusetts or Illinois on the last day of the calendar year, exercising an election in the matter?

"MR. DIRKSEN. My interpretation of the matter is that their right to vote back home is preserved under this bill by complying with tax requirements, by way of poll tax and otherwise; but if they are actually domiciled here, which means that they have a legal domicile here, they will be taxable in the District of Columbia.

"MR. MCCORMACK. Does the gentleman realize the situation in which that places such an employee

unless he gives up his right of suffrage or the exercise of his right of suffrage? He would have to pay an income tax in his own State, he would have to pay an income tax here, and he would have to pay an income tax to the Federal Government.

"MR. DIRKSEN. I do not so understand it. I think one can have a taxable domicile in the District of Columbia and still preserve his voting rights back home.

"MR. MCCORMACK. If you have a residence for voting purposes, you have a domicile in the State in which you are voting, have you not?

"MR. DIRKSEN. I do not believe so.

"MR. MCCORMACK. The gentleman, I am sure, does not want to put any employee of the Federal Government in a different position from that in which he places a Member of Congress.

"MR. DIRKSEN. That is quite true.

"MR. MCCORMACK. I agree that a Member of Congress should not pay an income tax to the State, to the District, and to the Federal Government. The newspapers, unfortunately, and I assume in many cases unintentionally, have misstated the situation. However, the same thing applies, in my opinion, to the employees of the Federal Government; and if their legal domicile is in the District of Columbia, they are subject to the income tax. If they register in their home State, then, in my opinion, they are also subject to the income tax of the State and they are also subject to the income tax of the Federal Government.

"MR. DIRKSEN. I may say that is not my interpretation of it and neither is that the interpretation of

the tax experts who worked with the committee on this subject.

"MR. MCCORMACK. I think this is a point that should be cleared up. Suppose a person comes from Boston, and the same thing applies to any other city in the country or any other State like Massachusetts, and his yearly employment is in the District of Columbia. He is living here all the year, but he registers for voting purposes in Massachusetts. He cannot vote here and we all know the reasons why, but he wants to exercise his right of suffrage and if he registers in Massachusetts, does he still have to pay the income tax here?

"MR. DIRKSEN. That precise question was raised in the course of the conference. (Here the gavel fell.)

"MR. NICHOLS. Mr. Speaker, I yield the gentleman 5 additional minutes.

"MR. DIRKSEN. I will say to the gentleman from Massachusetts that I raised that precise question in the course of the conference. We had it up at considerable length with all the tax advisers to this committee, as well as the conference committee, and we were of the opinion you could be taxed here, and yet you can vote back home because you have a taxable domicile in the District. It does not interfere with your right, if you pay your poll tax in Massachusetts, to vote back there and still pay your income tax here. The situation the gentleman alludes to might very conceivably arise in connection with the case of a family that has lived here for 20 or 30 years. They continue to vote back there, but is there any reason why it should not be held that they have a taxable domicile in the District of Columbia since this is the place where they live?

"MR. MCCORMACK. I understand that, and I do not want to prolong my inquiry, although I consider it very important.

"MR. DIRKSEN. It is important.

"MR. MCCORMACK. I think the conference committee has decidedly improved the bill over its condition as it passed the House and the Senate, but does the gentleman not think that the District of Columbia is peculiar? It is entirely different from any other political subdivision; it is entirely different from any other city in the country. People come here from all over the country, most of them employed by the Federal Government, and most of them thinking of home. They may stay here 20 or 25 years, thinking of retirement, and thinking finally of getting back home to Michigan or California or Texas or whatever the State may be from which they came.

"If they are going to be subject to the State income tax and the District income tax and the Federal income tax, then we are subjecting them to three income taxes, and in order to avoid that they have only one thing to do and that is not to register for the purpose of voting, and if we compel them to do that, then we are compelling them to involuntarily give up the exercise of their suffrage. Whether or not they are to be taxed in the States is something that we cannot determine. That will be determined in accordance with State law, not by anything that we pass, or anything that the Commissioners of the District of Columbia may say.

"MR. DIRKSEN. All we can determine is that in every State there is a credit device whereby the charge that there may be triple taxation is avoided.

"MR. BATES of Massachusetts. Mr. Speaker, will the gentleman yield?

"MR. DIRKSEN. Yes.

"MR. BATES of Massachusetts. That particular point that my colleague from Massachusetts raises was made very pointedly in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also.

* * * *

"MR. NICHOLS. Mr. Speaker will the gentleman permit me to read the legal definition of the word 'domicile'?

"MR. DIRKSEN. I yield to the gentleman from Oklahoma.

"MR. NICHOLS. Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read:

> "Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights. * * * There must exist in combination the fact of residence and animus manendi—

> which means residence and his intention to return; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."

In support of its view that the legislative history of the Act here involved "clearly reveals" Congressional intent consistent with the rule laid down in this and the *Sweeney* case, the Court of Appeals relies on the above-mentioned statements of Senator Overton, Mr. Nichols, and Mr. Bates (R. 22, 23). It is respectfully submitted that this conclusion of the Court of Appeals, based upon selected portions of the legislative history, is erroneous, and that an examination of the entire legislative history of the Act reveals Congressional intent consistent with the views taken by the petitioners herein. This view is supported by the following considerations:

(a) The language in dispute was inserted in the bill by the conferees. Thus, the interpretation of the conferees is of primary importance in determining Congressional intent. The above-quoted remarks of Mr. Dirksen clearly set forth the interpretation which the conferees intended to have placed upon the language in question. The views of the conferees, having been explained and discussed on the floor, apparently were accepted by the members of the House of Representatives.

(b) The statement by Mr. Bates, one of the conferees, merely confirmed the fact that the questions in issue had been raised in the Committee of Conference, and affirmed Mr. Dirksen's statement that the credit device available in each state should be used to avoid any possibility of "triple taxation".

(c) Mr. Nichols, although chairman of the House conferees, was not present at the conference on the bill and, therefore, was not in position to express the views of the conferees. The definition of the word "domicile" which he read from the floor presumably has the sanction of its unidentified author but

was neither subscribed to by any of the conferees nor adopted by the House.

(d) Likewise, Senator Overton did not suggest that his interpretation of the term "domiciled" represented the views of the conferees. The conference report was accepted by the Senate without debate and, in view of the clear statements during the course of the debate in the House regarding the opinion of the conferees, it would appear that Senator Overton's statements regarding the construction to be placed upon the term "domiciled" are merely expressions of personal opinion and do not represent the views of any of the other conferees.

The only reasonable interpretation of the word "domiciled" is that urged by the petitioner.

In construing the language here in question, practical considerations applicable to taxation should prevail.[29] The interpretation adopted by the Court of Appeals in the instant case is not only unreasonable and impractical but is inconsistent with that Court's decision in the *Sweeney* case. The *Sweeney* decision apparently attempts to adhere to the traditional legal formula for determining domicile and the evidence clearly shows that respondent here was domiciled in the District of Columbia on December 31, 1939, under the test laid down in the *Sweeney* case. In the instant case, however, the Court of Appeals abandons all legal formulae and holds that Government employees residing either permanently or indefinitely in the District of Columbia may elect to be domiciled in either the District or the states wherein they formerly resided, and, likewise, may elect to contribute to the support of either or neither of such governments.

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[29] Cf. *Helvering* v. *Hallock*, 309 U.S. 106; *Farmers' Loan & Trust Co.* v. *Minnesota*, 280 U.S. 204.

Respondent came to the District voluntarily to seek employment and has remained here through preference for more than twenty-six years, and intends to remain here and make the District permanently his home. Although he may elect to retain his citizenship and vote in the State of Pennsylvania it is only reasonable and sensible that he should be domiciled in the District of Columbia for purposes of taxation and be thereby required to contribute proportionately to the support of the government which affords him protection. [21]

CONCLUSION

For the reasons above stated, it is respectfully submitted that respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939, and that the decision of the Court of Appeals should be reversed.

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VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
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[21] Cf. *New York Ex Rel. Cohn* v. *Graves*, 300 U. S. 308.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 992

DISTRICT OF COLUMBIA, *Petitioner*,

v.

PAUL N. DEHART, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CONSTITUTION AND STATUTES INVOLVED.

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Opinions Below.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 11) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 19-23) is not yet reported.

Jurisdiction.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941 (R. 23). The petition for a writ of certiorari was filed

April 25, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether certiorari shall be granted to review a decision of the United States Court of Appeals for the District of Columbia, wherein the sole question presented was whether the respondent, an employee of the Federal Government, was domiciled in the District of Columbia on December 31, 1939, within the meaning of Section 2(a) of the District of Columbia Income Tax Act (Sec. 980(a), Title 20 D. C. Code, 1929, Supplement V).

Statute Involved.

Sec. 2(a) of the District of Columbia Income Tax Act (Sec. 980(a), Title 20, D. C. Code, 1929, Supplement V) provides as follows:

> "Tax on Individuals.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

SUMMARY OF ARGUMENT.

I.

The present case involves a statute limited in application and is not important:

(a) This Court does not ordinarily review cases arising under statutes limited to the District of Columbia.

(b) This Court has recently denied certiorari in a case presenting identical issues.

(c) The facts of this case are not typical of a great number of Federal employees in the District of Columbia.

II.

The decision of the Court below is correct on its merits:

(a) The legislative history shows that Congress did not intend the statute to apply to Federal employees in the District of Columbia who have not abandoned State domiciliation.

(b) Respondent was not domiciled in the District of Columbia on December 31, 1939.

(c) The decision of the Court below is founded upon correct principles of law.

(d) The decision of the Court below operates equitably.

ARGUMENT.

I.

The present case involves a statute limited in application and is not important

(a)

The statute involved is confined in its operation to the District of Columbia. Cases arising under such a statute are not ordinarily reviewed by this Court.

Del Vecchio v. *Bowers*, (1935) 296 U. S. 280, 285.

(b)

This Court has recently denied certiorari in a case involving the same petitioner presenting identical issues.

On May 20, 1940, this Court denied a petition for a writ of certiorari filed by the District of Columbia, wherein issues relating to the domicile of Federal employees in the District of Columbia were raised which were identical with those raised here.

Sweeney v. *District of Columbia*, ... App. D. C. ... 113 F. (2d) 25, *certiorari denied*, 310 U. S. 631.

(c)

The facts of this case are not typical of a great number of Federal employees in the District of Columbia.

The respondent is a citizen of Michigan and domiciled in that State. Michigan has no income tax, whereas all but a few States have income tax systems and Federal employees from those States are subjected to State income taxation. It follows that the facts in this case are not typical of a great number of Federal employees in the District of Columbia.

II.

The decision of the Court below is correct on its merits:

(a)

The legislative history of the statute in question indicates clearly that Congress did not intend that the statute should apply to Federal employees in the District of Columbia provided such employees have not voluntarily surrendered their State domiciles and voluntarily acquired domiciles in the District of Columbia.

The bill which was originally introduced in the House established the following basis of taxation:

> "(b) the tax to be imposed on all residents of the District of Columbia regardless of source of income." (Report of the House Conferees, Cong. Record, July

12, 1939. Vol. 84, Part 8, 76th Cong. 1st Session, p. 8971.)

The bill was amended while still in the House to exempt members of Congress and their immediate staffs.

A basis of taxation which would render liable all residents except members of Congress and their staffs was unacceptable to the Senate, and in conference agreement was reached upon the principle of taxing only those domiciled in the District of Columbia.

Since the change of the basis of taxation from residence to domicile originated in the Senate, it is important to set forth the explanatory statement of Senator Overton, who was Chairman of the Managers on the part of the Senate and in charge of its passage:

> "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and *Federal employees who have been brought into the District from the various States of the Union to serve their Country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia.*" (Cong. Record, July 11, 1939, Vol. 84, Part 8, 76th Cong., 1st Session, p. 8824.)

The same view as to the meaning to be given to the word "domicile" prevailed among the managers on the part of the House, except Representative Dirksen.

On July 12, 1939, the day after Senator Overton's explanatory statement, Mr. Bates of Massachusetts, one of the conferees on the part of the House, replied to a statement by Mr. McCormack that if Federal employees were to be subjected to Federal, State and District of Columbia income taxes, the Congress would be compelling them involuntarily to give up the exercise of their suffrage.

Mr. Bates stated:

> "That particular point that my colleague from Massachusetts raises was made in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income tax provisions of the new law, and it is distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also." (Cong. Record, July 12, 1939, Vol. 84, Part 8, 76th Cong., 1st Session, p. 8973.)

A definition of the term "domicile" was announced on the floor of the House which was not challenged, and consequently should be given great weight in determining the interpretation to be given to that word.

Mr. Nichols of the Committee on the District of Columbia submitted the Conference Report which ultimately became the present law:

> "Mr. Nichols: Since the question of the effect of the word 'domicile' in this Act has been raised, I think the House would probably like the legal definition read:
>
> "'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights—There must exist in combination the fact of residence and animus manendi—'
>
> which means residence and his intention to return (sic): so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States." (Cong. Record, July 12, 1939, Vol. 84, Part 8, 76th Cong. 1st Session, p. 8974.)

To accept the contention of the petitioner as to the meaning of the term "domicile" is to disregard the plain intent of the Congress, and to substitute for the present statute the provisions of a bill which the Congress had rejected.

(b)

Respondent was not domiciled in the District of Columbia.

Respondent, DeHart, came to Washington in 1914, and has had the constant intent to return to Pennsylvania. Such purchases of land as were made during his stay here were for the purpose of providing a place of abode, and his intent was and still is to dispose of this property on his retirement and to return to Pennsylvania (R. 6).

The respondent has exercised his right of suffrage in Dauphin County, Pennsylvania, at all times since his majority, has retained a room in his parents home there, and has constantly maintained his religious, civic and fraternal associations in Pennsylvania (R. 8).

Of all the criteria as to domicile, the exercise of the right of voting is among the most important.

> *Shelton* v. *Tiffin*, 6 How. 163 (1848).
> *Rollings* v. *Rollings*, 53 F. (2d) 917, 60 App. D. C. 305 (1931).
> *Downs* v. *Downs*, 23 App. D. C. 381 (1904).
> *Commonwealth* v. *Emerson*, 1 Pear. (Pa.) 204 (1861).

The respondent has paid poll taxes or occupational taxes in Pennsylvania each year since 1914 (R. 8).

The true test as to the retention of State domicile by a Federal employee residing in the District of Columbia has been announced in the case of *District of Columbia* v. *Sweeney*, — App. D. C. — 113 F. (2d) 25, 33; *cert. den.* 310 U. S. 631.

> "Except for the payment of taxes on his intangible personalty (the record does not show that Massachusetts taxes it at all except as to income) petitioner has done all that anyone could do, circumstanced as he has been, to maintain his state domiciliation. It follows that he was not domiciled in the District on the taxable dates and that the taxes assessed against him as a domiciliary were invalid."

In the instant case, the respondent has done all that anyone could do, circumstanced as he has been, to maintain his state domiciliation. It follows that he was not domiciled in the District of Columbia on December 31, 1939.

(c)

The decision of the Court below was founded upon correct principles of law.

In an exhaustive opinion which examined to its roots the question of the domicile of Federal employees in the District of Columbia, the United States Court of Appeals for the District of Columbia enunciated the correct principle of law as follows:

> "Accordingly we think that one who comes to the District and remains to render service to the Government which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intent to forego his state allegiance. * * * The considerations which we have held controlling require that evidence of intention to change be clear and unequivocal. * * *"

Sweeney v. *District of Columbia*, — App. D. C. —, 113 F. (2d) 25, 32; *cert. den.* 310 U. S. 631.

See also Lesh v. *Lesh*, (1903) 13 Pa. Dist. Rep. 537, 540.

Atherton v. *Thornton*, (1835) 8 N. H. 178 and authorities cited in Kennan on Residence and Domicile (1934), Sections 67 and 68, pp. 142-145.

It is pertinent to note that most States require domicile for voting and have constitutional provisions preventing loss of "residence" for voting purposes by absence in Government service. Such a provision appears in Article VIII of the Constitution of the State of Pennsylvania. Section 13 of that Article reads:

> "For the purpose of voting no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the

> service, either civil or military of this State or of the United States. * * *" (Purdon's Pennsylvania Statutes, 1936, p. xxx.)

The argument of petitioner that the domicile of an employee of the Federal Government should be determined by the same general rules applicable to persons in private employment is faulty for two reasons. First, the question before this Court is the domicile of Federal employees in the District of Columbia and not elsewhere. Second, it leaves the inference that one may be domiciled for purposes of taxation in one jurisdiction and domiciled for other purposes in another jurisdiction.

One of the few propositions on the law of domicile upon which all authorities are agreed is that an individual may have one, and only one, domicile.

Mr. Justice Holmes in the case of *Williamson* v. *Osenton*, 232 U. S. 619, 625 (1914) stated:

> "The very meaning of domicile is the technically preeminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Bergner and Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157. In its nature it is one, and if in any case two are recognized for different purposes, it is a doubtful anomaly. Dicey, Conflict of Laws, 2d Ed. 98."

See also Beale, Conflict of Laws (1935) Vol. I, p. 123, Kennan on Residence and Domicile (1934), Section 13, pages 34-35.

In its discussion of the question of domicile of Federal employes in the District of Columbia "for purposes of taxation" the petitioner advances the novel proposition that there is a distinction between civil and political domicile.

This proposition was condemned by the United States Court of Apeals for the District of Columbia in the case of *Sweeney* v. *District of Columbia*, — App. D. C. — 13 F. (2d) 25, 30; *cert. den.* 310 U. S. 631, in the following words:

"... the suggested distinction is more theoretical than practical, argumentatively specious than safely tenable..."

(d)

The decision of the Court below operates equitably. To reverse that decision would result, in the majority of cases, in subjecting the income of Federal employees in the District of Columbia to double taxation quite apart from the Federal income tax.

On March 27, 1939, in the case of *Graves* v. *New York ex rel. O'Keefe*, (306 U. S. 466) this Court held that there was no constitutional prohibition against the taxation of Federal salaries by the States. On April 12, 1939, sixteen days after the decision was handed down, the Public Salaries Act was approved (53 Stat. (Part 2) 574) making State salaries subject to Federal taxation and consenting to State taxation of Federal salaries. Shortly afterward most of the states subjected Federal salaries to taxation. (Pennsylvania, which is the State of the respondent's domicile, is one of the very few States which has no income tax system.)

The practical question in the case of Graves v. O'Keefe was whether individuals deriving Federal salaries shall be placed in a preferred cateory by exempting such salaries from State taxation. The answer was in the negative. The practical question in this case was whether individuals deriving salaries from Federal employment in the District of Columbia should be placed in an especially onerous category by subjecting them to income taxation in the District of Columbia, as well as in the States of domicile. The answer by the Court below was in the negative. The decision is just and should not be disturbed.

CONCLUSION.

It is respectfully submitted that because the present case is not important and involves a statute limited in application to the District of Columbia, and because the decision of the Court below is correct on its merits, the petition for a writ of certiorari should not be granted.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 59.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

PAUL M. DE HART, *Respondent*.

BRIEF FOR RESPONDENT.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

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PAUL M. DE HART, *Respondent*.

BRIEF FOR RESPONDENT.

OPINIONS BELOW.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-12) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 20-24) is reported at 119 F. (2d) 449.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The statement of the case as given in petitioner's brief, pages 2-4, is substantially correct, except that while the record shows that after retirement 6 months of the year were to be spent in Selby on the Bay, Maryland, it does not show that 6 months of each year after retirement were to be spent in the District of Columbia..

STATUTE INVOLVED.

Section 2(a) of the District of Columbia Income Tax Act, (53 Stat. 1087) Section 980a. Title 20, D. C. Code, 1929, Supplement V, provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"
>
> • • • • • • • •

SUMMARY OF ARGUMENT.

I.

Congress did not intend the Act to apply to Federal employees in the District of Columbia unless they had abandoned their domiciles in the states.

II.

The decision of the Court below was based upon correct principles of law and was equitable because it avoided double taxation.

III.

A reversal of the decision of the Court below would immediately deprive at least 24 states of the right to tax Federal employees in the District of Columbia domiciled in those states, and would subject Federal employees from two states to double taxation.

ARGUMENT.

I.

Congress did not intend the Act to apply to Federal employees in the District of Columbia unless they had abandoned their domiciles in the states.

Since the essence of the present case is the interpretation to be given to the word "domiciled", it seems necessary to trace the legislative history of the act imposing the tax liability. The act itself does not define the term.

Reference will be made to the first House bill because it shows the point of departure. According to the report of the House Conferees, the House bill originally provided:

> "(b) the tax to be imposed on all residents of the District of Columbia, regardless of source of income, and on nonresident individuals and corporations on income from sources within the District, with provisions for tax paid in other jurisdictions to avoid double taxation.'"[1]

The language of this report shows clearly that at the outset the House desired to avoid double taxation. It recognizes that there may be persons resident in the District of Columbia who are domiciled in the several states. Accordingly when it was planned to base tax liability upon residence, provision was made for a credit against taxes paid in other jurisdictions.

The bill was amended on the floor of the House so as to exempt from the income tax "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States."[2] This exemption provision was unacceptable to the Senate, and the bill was sent to conference where agreement was reached on the principle that the tax should be

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[1] 84 Cong. Record (Part 8) 8971; for digest of history of H. R. 6577, see 84 Cong. Record (Part 15), Index, p. 849.

[2] 84 Cong. Record (Part 7) 7036.

levied on "every individual domiciled in the District of Columbia on the last day of the taxable year."

There follows an explanation from the report of the managers on the part of the House which throws light upon the omission from the final Act of any provision for a tax credit.

> "(b) the tax is imposed on persons domiciled in the District on the last day of the taxable year, regardless of source of income, and upon corporations on sources from within the District, no tax is imposed on individuals domiciled without the District from sources within the District, and no provision is made for credit allowance to persons domiciled in the District for tax paid to other jurisdictions on income from sources therein."[1]

It seems clear that when the basis of tax liability was shifted from "residence" to "domicile", no provision was made for a tax credit, because the tax was not to be imposed on those persons domiciled outside the District. The omission of the tax credit provision ought not to be construed as sanctioning double taxation, but rather as an indication that the drafters of the bill thought it unnecessary to do so because they had segregated the classes of taxpayers in such a way as to avoid double taxation; that is, those persons domiciled in the states were to pay income taxes to the states, and those persons domiciled in the District were to pay income tax to the District.

It being clear that the Congress did not intend to subject Federal employees in the District of Columbia to double taxation, it is appropriate to inquire whether the Congress intended the Federal employees in the District of Columbia to be subjected to income taxation in the states *or* in the District of Columbia.

Senator Overton, chairman of the managers on the part of the Senate, in reporting the action of the conferees, stated

[1] 84 Cong. Record (Part 8) 8971.

with reference to the imposition of tax liability on the basis of domicile:

> "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and *Federal employees who have been brought into the District from the various States of the Union to serve their Country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia.*"[1]

Counsel for the petitioner refer to this evidence as to the intent of Congress and attempt to dismiss it as being merely an expression of personal opinion (Petitioner's Brief, p. 28). This view is believed to be erroneous and based upon conjecture.

It is urged that the view as to the interpretation of the word "domicile" as given by Senator Overton, also prevailed among the managers on the part of the House, except Representative Dirksen.

On July 12, 1939, the day after Senator Overton's explanatory statement, Mr. Bates of Massachusetts, one of the conferees on the part of the House, replied to a statement by Mr. McCormack that if Federal employees were to be subjected to Federal, State, and District of Columbia income taxes, the Congress would be compelling them involuntarily to give up the exercise of their suffrage.

Mr. Bates stated:

> "That particular point that my colleague from Massachusetts raises was made in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income tax provisions of the

[1] 84 Cong. Record (Part 8) 8825.

> new law, and it is distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also."[1]

A definition of the term "domicile" was announced on the floor of the House which was not challenged, and consequently should be given great weight in determining the interpretation to be given to that word.

Mr. Nichols of the Committee on the District of Columbia submitted the Conference Report which ultimately became the present law:

> "Mr. Nichols: Since the question of the effect of the word 'domicile' in this Act has been raised, I think the House would probably like the legal definition read:
>
> "'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights—There must exist in combination the fact of residence and animus manendi—'
>
> which means residence and his intention to return (sic); so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."[2]

Counsel for the petitioner in their brief at page 27 allege that the statement made by Mr. Bates does not bear upon the point and that the definition read by Mr. Nichols was not adopted by the House. All of the discussion in the Congress is printed in the petitioner's brief (pp. 21-26) and respondent is satisfied that a reading of this discussion leaves the conclusion that the prevailing opinion was that Federal employees in the District of Columbia were not to be subject to the tax unless they had surrendered their domiciles in the States from which they were appointed and acquired domiciles in the District of Columbia. It has been

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[1] 84 Cong. Record (Part 8) 8973.

[2] 84 Cong. Record (Part 8) 8974.

frankly stated by he respondent to the Court below, and in the brief in opposition to the granting of a writ of certiorari, that Mr. Dirksen did not share this view, but it has been maintained and is again maintained that the prevailing view among the conferees was that the interpretation to be accorded to the word "domiciled" would leave the Federal employee liable to income taxation in his home state and exempt in the District of Columbia.

II.

The decision of the Court below was based upon correct principles of law and was equitable because it avoided double taxation.

A.

The decision of the Court below was based upon correct principles of law. The domicile of a Federal employee in the District of Columbia is not to be determined under the same general rules applicable to persons in private employment.

The decision in the Court below was rested squarely upon the statement of law enunciated in the case of James J. Sweeney v. District of Columbia[1] which arose on assentially identical facts. The question for decision was stated by that Court as follows:

> "Boiled down to its essence, the question here is whether a citizen and resident of a state must surrender his state allegiance for all the purposes in which domicil may be controlling when he accepts Federal employment in the District of indefinite or relatively permanent duration."

The decision of that case is as follows:

> "Accordingly we think that one who comes to the District and remains to render service to the Govern-

[1] 72 App. D. C. 30 (1940), 113 F. (2d) 25 (1940), cert. den. 310 U. S. 631.

> ment which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intent to forego his state allegiance. * * * The considerations which we have held controlling require that evidence of intention to change be clear and unequivocal. * * *"

The Court reasoned that a contrary decision would create unjust and intolerable discriminations. It would permit military men, elected officials, and officials appointed for a definite term to retain their state domiciliation, and to deprive of state domiciliation and impose that of the District upon members of the Federal Courts, members of administrative tribunals enjoying long, but not unlimited tenure, and upon Civil Service employees.

The Court advanced additional reasons to support its view:

> "Without regard to constitutional considerations, the system would be strange which would permit or require state domiciliation for elected legislative and executive officials and deny it automatically to co-ordinate judicial officers or compel them to maintain it by residing outside the District and in a state not otherwise of their choice. Equally, if not more, strange would be one so capable of discriminating, in practical consequences and legal effects, between the high and the low, the well-to-do and the poor in the Federal service. If such a price were placed so broadly upon the acceptance of Federal duty, the consequences would be entirely unpredictable, whether for the Government or for the individuals immediately concerned. Many would accept it of necessity. Others would not do so for any preferment. State attachment is not incompatible with Federal service. On the contrary, it remains a compelling allegiance, secondary only to national loyalty, not merely for a few, but for all Federal servants who do not prefer District domiciliation. Our dual system contemplates a harmony, not an antagonism, of state and national allegiances. Each is the complement, not the antithesis, of the other. A rule which would compel surrender of the one in order to

> exercise the other fully would be inconsistent with these principles. Creation of a vast army of Federal officials and employees detached from the states in all of the civil and political relations which domicil sustains is not a thing desired or desirable, whether regarded from the point of view of the Government, the states, or the individuals. That connection with the home community is a key pin in the structure of the dual system. It should not be weakened or destroyed, as it would be by acceptance of respondent's view." (Footnotes omitted)

Counsel for the petitioner attempt to avoid the rule of law enunciated in the Sweeney case by arguing that Federal employees may be domiciled in the District of Columbia for purposes of taxation, and domiciled in their home states for other purposes. While admitting that there is a difference between citizenship and domicile, it cannot be admitted that domicile is divisible.

One of the few propositions in the law of domicile upon which all authorities are agreed is that an individual may have one, and only one, domicile.

Mr. Justice Holmes in the case of *Williamson* v. *Osenton*[1] stated:

> "The very meaning of domicile is the technically preeminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Bergner and Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157. In its nature it is one, and if in any case two are recognized for different purposes, it is a doubtful anomaly. Dicey, Conflict of Laws, 2d Ed. 98."
>
> See also: Beale, Conflict of Laws, (1935) Vol. I, p. 123, Kennan on Residence and Domicile, (1934) Sec. 13, pp. 34-35.

The Court below considered the proposition that there is a distinction between civil and political domicile and the proposition was rejected by the Court as being "more theo-

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[1] 232 U. S. 619, 625 (1914).

oretical than practical, argumentatively specious than safely tenable."[1]

The rule that the Federal employee is entitled to retain his domicile in the state from which he was appointed, which was confirmed in the *Sweeney* case, is supported by the clear weight of judicial authority, many instances of Congressional recognition in principle, and the long-established custom and practice of other officials and departments.[2]

Since domicile must be one, the question seems to be whether, after residence in the District of Columbia, coupled with the intent to stay here so long as his Federal employment continues, the Federal employee shall be conclusively deemed to be domiciled in the District of Columbia, or whether he shall be permitted to retain the domicile of the state from which he was appointed if he so desires.

In this connection it is pertinent to note that practically all states have provisions either in their Constitution or laws, requiring domicile as a condition for the exercise of the franchise and providing that absence in the Government service does not prevent loss of "residence."

In this case, for example, Article VIII, Section 13, of the Constitution of the Commonwealth of Pennsylvania reads:

> "For the purpose voting no person shall be deemed to have gained a residence by reason of his presence, or

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[1] 72 App. D. C. 30, 35 (1940); 113 F. (2d) 25, 30 (1940). The idea of "fiscal domicile" appearing in European tax treaties as applied to individuals means the same as "domicile" in this country, League of Nations C. 118. M. 57. 1936. II. A. pp. 9 and 23; it was adopted of necessity and was not intended to change concepts of domicile in other fields, L. of N., F. 212 of February 7, 1925, p. 20; "fiscal domicile" means one thing for income tax and something else for succession duties, F/Fiscal/111 of June 22, 1939, p. 17. Finally the idea of "fiscal domicile" has not been accepted by this country in dealing with continental countries. (U. S.-Swedish Tax Convention, signed March 23, 1939; U. S. Treaty Series No. 958, and U. S.-French Tax Convention, signed July 25, 1939, 76th Congress, 3d Session, Executive Report No. 7.)

[2] See citations and footnotes in Sweeney v. District of Columbia, 72 App. D. C. 30, 37 (1940); 113 F. (2d) 25, 32 (1940). The rule is of ancient origin. Bruce v. Bruce (1790), 2 Bosanquet & Puller 229, and Atherton v. Thornton (1835), 8 N. H. 178.

lost it by reason of his absence, while employed in the service, either civil or military of this State or of the United States. * * *"[1]

If this Court confirms the common law doctrine that domicile is indivisible and at the same time rules that Federal employees are domiciled in the District of Columbia, it will deprive Federal employees of their franchise in the several states.

B.

The decision of the Court below was equitable because it avoided double taxation.

The decision of this Court in the case of *Graves* v. *O'Keefe*, 306 U. S. 466, was handed down on March 27, 1939. That decision stated that there was no principle of constitutional law exempting Federal salaries from state taxation or exempting state salaries from Federal taxation. Within sixteen days, on April 12, 1939, the Public Salary Tax Act was approved.[2] That Act extended the Federal income tax to state compensation and provided that state income tax laws may apply to Federal compensation.

A large number of state legislatures immediately amended their income tax laws to eliminate Federal salaries from the list of items of income to be excluded from gross income. In 1939, seventeen states removed the exemption heretofore accorded. The laws of nine others automatically provided for taxation of Federal salaries whenever the Federal law permitted, or whenever state salaries became subject to Federal taxation. Six additional states removed the exemptions in 1940 and 1941.

It is abundantly clear that Federal salaries are, in fact, taxable under the laws of all states having personal income tax laws. Whether salaries derived by Federal employees in the District of Columbia are subject to these state laws is a matter of interpretation.

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[1] Purdon's Pennsylvania Statutes, 1936, p. xxx.

[2] 53 Stat. (Part 2) 574. See Title I, Sections 1 and 4.

Counsel for the petitioner in their brief at pages 16 and 17 allege:

> "Examination of the laws and regulations of the remaining twenty-three states disclose that in only one instance do such laws and regulations indicate an intention to extend the tax to individuals (either Government employees or others) having their homes and actually residing and earning their income without the state."

Counsel for the respondent has likewise examined carefully all of the income tax laws and some of the regulations of the various states and comes to contrary conclusion. Not being content to rest his case upon such an examination alone, on September 3, 1941, he addressed the State Income Tax Departments of 32 states which were believed to subject the salaries in question to state taxation, and inquired whether "You would consider a person who claims to be domiciled in your State, but who works for the Federal Government in the District of Columbia and maintains a home here, as liable to your State Income Tax on his Federal salary."

Of the 31 replies received, 25 states unequivocally replied that Federal employees in the District of Columbia, claiming domicile in the states from which they were appointed, were subject to state taxation on their Federal salaries. Five state administrators replied in the negative, and one reply was doubtful.

There has been filed with the Clerk of this Court nine copies of a table entitled "Liability to State Income Taxation of Federal Employees in the District of Columbia Claiming Domicile in the States From Which They Were Appointed." The second column of this table has a carefully prepared list of citations to those provisions of the state income tax laws which define the term "residents" and make Federal salaries subject to state taxation. The third column indicates briefly the opinions of the state tax administrators. The originals of the letters containing these opinions have also been filed with the Clerk.

If the Court below had held Federal employees from the various states to be domiciled in the District of Columbia, they would have been subjected to income taxation on those salaries in the District of Columbia as well as in the majority of the states. The decision of the Court below was, therefore, entirely equitable.

III.

A reversal of the decision of the Court below would immediately deprive at least 24 states of the right to tax Federal employees in the District of Columbia domiciled in those states, and would subject Federal employees from two states to double taxation.

While it is believed that the Court below was correct in permitting Federal employees in the District of Columbia to retain their domiciles in the states from which they were appointed, it is recognized that it is possible for this Court to assign Federal employees a domicile in the District of Columbia. Since no individual may be domiciled in more than one place, to hold that a Federal employee is domiciled in the District of Columbia is to relieve him of domicile in the state from which he was appointed. To relieve a Federal employee in the District of Columbia of domicile in the state from which he was appointed is to relieve him of taxation in that state, since nearly all states which tax Federal employees in the District of Columbia do so on the ground that they are domiciled in those states.

It is argued to this Court that the Public Salary Tax Act was intended to permit the several states to tax all Federal salaries. There is no express condition forbidding them to tax Federal salaries of their citizens derived in the District of Columbia. Nevertheless, a reversal of the decision of the Court below will bar them from continuing in this field of taxation.

A reversal of the decision of the Court below by this Court would immediately subject Federal employees from

Delaware and Missouri to double taxation, whereas at the present time they are subject to income taxation only in those states. These states impose liability on the basis of *citizenship* as well as residence.[1] To hold that Federal employees from the states are domiciled in the District of Columbia would be to subject them to income taxation in the District of Columbia while leaving them liable to taxation in those states. The affirmation of the decision of the Court below would leave them liable to taxation in those states alone.

Essentially, the question in the case *Graves* v. *O'Keefe* was one of taxation, as opposed to escape from taxation. In the present case, the essential question has been taxation, as against double taxation; but in its final stage the question is: where shall the Federal employee in the District of Columbia be subjected to income taxation? It is submitted that the legislative history of the act, the law, and the equities require that the Federal employee in the District of Columbia who intends to return to his home state be subjected to but one income tax, and that in the state from which he comes.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that respondent was not domiciled in the District of Columbia on December 31, 1939, and that the decision of the Court of Appeals should be affirmed.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

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[1] Revised Code of Delaware, 1935, Sec. 144 (b) (1), and Revised Stat. of Missouri, 1939, Vol. II, Sec. 11343 (p. 2972).

p. p. 2, 4, 7, 10

SUPREME COURT OF THE UNITED STATES.

Nos. 58 and 59.—October Term, 1941.

58	District of Columbia, Petitioner, *vs.* Henry C. Murphy.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
59	District of Columbia, Petitioner, *vs.* Paul M. De Hart.	

[December 15, 1941.]

Mr. Justice Jackson delivered the opinion of the Court.

These cases, which have been argued together, differ somewhat in facts, but each involves a controversy as to whether respondent was domiciled within the District of Columbia on December 31, 1939, within the meaning of § 2(a) of the District of Columbia Income Tax Act,[1] which lays a tax on "the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year." The following facts appear from proceedings before the Board of Tax Appeals for the District of Columbia:

The respondent in No. 58, a single man, first came to the District of Columbia in 1935 to work as an economist in the Treasury Department, and was blanketed into Civil Service in that position in July, 1938. He came here from Detroit, Michigan, and has ever since continued to be a registered voter and has voted in the elections and primaries in Wayne County, Michigan. He was born in New London, Connecticut, in 1905, and when five years old moved with his parents to Los Angeles, California, where he resided until 1926, when he removed to Berkeley, California. His parents live in California. In 1929 he completed his studies at Brown University and immediately thereafter accepted employment in a trust company in Detroit, Michigan, of which one of his former professors at Brown was vice president. While in Detroit, respondent lived first in a rooming house and later in an apartment. He owns no property there. In the District of Columbia he lives in an apartment, which

[1] 53 Stat. 1087; 20 D. C. Code (Supp. V, 1939) § 980(a).

he has furnished himself. His present employment pays him $6,500 a year, while that which he left in Detroit paid but $6,000. He testified before the Board of Tax Appeals that he does not think he would improve his condition by returning to Detroit, but that "It is the place to which I will return if I ever become disemployed by the Government, which I hope will not happen . . . ." Although he has no present connection with the trust company, he believes that he could go back with it if he should return to Detroit. If a better position than he now has should be offered in a city other than Detroit, he "very likely would" accept it, despite a "preference for Detroit" based on a belief that he "would fit in more easily" there.

Respondent claimed that Detroit was his "legal residence" and that he was not domiciled in the District of Columbia. The Board of Tax Appeals for the District of Columbia found "as a fact" that when he came to Washington in 1935 he "had an intention to remain and make his home in the District of Columbia for an indefinite period of time; and that such intention has ever since, and still does remain with him; and that if he has any intention to return and make his home in Detroit, it is a floating intention." The Board held, however, "as matter of law," that on December 31, 1939 the last day of the taxable year, petitioner was not domiciled in the District of Columbia, believing that it was compelled to do so by the decision of the United States Court of Appeals for the District of Columbia in *Sweeney* v. *District of Columbia*, 113 F. 2d 25, certiorari denied, 310 U. S. 631.

The respondent in No. 59 lived in the District of Columbia for twenty-six years after coming here from Pennsylvania in 1914 to accept a clerical position of indefinite tenure under Civil Service in the Patent Office. He was then on a year's leave of absence from a railroad by which he was employed, but continued in the Civil Service to the time of hearing, becoming Chief Clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington. Single when he came, in 1917 he married a native of Washington, who died in 1935 without children. Shortly after their marriage the couple purchased as a home, premises at 1426 Massachusetts Avenue, S. E., in the District of Columbia, in which respondent still lives. In about 1925, he purchased a lot at "Selby on the Bay" in nearby Maryland, and before his wife's death he bought a building lot in

the District of Columbia, acting on his wife's pleas for a summer place and a better residence. He agreed with his wife that on his retirement six months would be spent at Selby. He testified that he never desired to purchase the lot in the District of Columbia, but did so at the insistence of his wife. He put a "For Sale" sign on it when she died, and both lots, which he still owns, are up for sale. He has deposits in three Washington financial institutions and owns first trust notes on property located in Maryland and Virginia.

In 1915 respondent became a member of a Lutheran church in Washington, and has ever since been an active member, at one time serving as president of its Christian Endeavor Society. He is a contributor to Washington charities, a member of the Motor Club of Washington, and of the Washington units of "Tall Cedars of Lebanon" and the "Mystic Shrine," both identified with freemasonry. He has filed his federal income-tax returns with the Collector of Internal Revenue at Baltimore, and always paid to the District of Columbia an intangible property tax while that tax was in effect.

Respondent had resided in Pennsylvania from birth until he left for Washington. He claimed as his "legal residence" the residence of his parents in Harrisburg, where they still keep intact his room in which are kept some of his clothes and childhood toys. Though paying nothing as rent or for lodging, he has from time to time made presents of money to his parents. He has visited his parents' home in Harrisburg over week ends at least eight times a year, and has been there annually between Christmas and the New Year. A registered voter in Pennsylvania, he has voted in all its general elections since he became of age. He paid the Pennsylvania poll tax until it was superseded by an occupational tax, which he has also paid. Payment of such taxes was a prerequisite to voting.

In 1912 respondent became a life member of the Robert Burns Lodge No. 464, Free and Accepted Masons, and of the Harrisburg Consistory, Scottish Rite, both Masonic bodies. While he resided in Harrisburg he was a member of the Bible Class of the Pine Street Presbyterian Church, which he still attends on visits there, and to which he made substantial contributions in 1939. He owns jointly with his father a note secured by a mortgage on Pennsylvania real estate. Respondent testified that he expected to retire from Civil Service in four years and intended then to sell his house and "leave Washington."

The Board found "as a fact" that at the end of one year after he came to the District in 1914 respondent "had an intention to remain and make his home in the District of Columbia for an indefinite period of time and that intention remained with him, at least until the death of his wife." As in No. 58, it considered itself bound by the *Sweeney* case, *supra*, and accordingly held "as a matter of law" that the petitioner was not domiciled in the District on December 31, 1939, and never had been.

The decisions in both cases were affirmed on review by the United States Court of Appeals for the District of Columbia. 119 F. 2d 449, 451. The cases were brought here on writs of certiorari because of the importance of the questions involved. 313 U. S. 556.

Although the District of Columbia Income Tax Act made "domicile" the fulcrum of the income tax, the first ever imposed in the District, it set forth no definition of that word. To ascertain its meaning we therefore consider the Congressional history of the Act, the situation with reference to which it was enacted, and the existing judicial precedents, with which Congress may be taken to have been familiar in at least a general way. *United States* v. *Dickerson*, 310 U. S. 554, 562.

As introduced into and passed by the House of Representatives, the bill which, with amendments, became the Act, laid a tax upon income of residents from whatever source derived, and upon income of nonresidents from sources within the District, with a provision for credit for the payment of income taxes elsewhere. H. R. 6577, 76th Cong., 1st Sess., §§2(a), 4(a), 9(a),(b). The bill was amended on the floor of the House to except "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States." 84 Cong. Rec. 7036. It was unacceptable to the Senate in this form, and it was agreed in conference that the tax should be levied "upon every individual domiciled in the District of Columbia on the last day of the taxable year," with no provision for credit for income taxes paid elsewhere. H. R. Rep. Nos. 1093, 1206, 76th Cong., 1st Sess., p. 3; Sen. Doc. No. 92, 76th Cong., 1st Sess., p. 3. This was agreed to by the Senate and by the House of Representatives, and became part of the Act under consideration.

The conference agreement was presented to the Senate by Senator Overton, chairman of the Senate conferees, with the following explanation: "Mr. President, I now call attention to the fact that the

individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia." 84 Cong. Rec. 8824. Senator Overton also stated: "I took the position before the District of Columbia Committee and in conference that I would not support any legislation which would exempt Senators and Members of the House of Representatives and their official force from an income tax in the District of Columbia but would impose it on all others I then took the position in conference that if we imposed an income tax only on those domiciled within the District, then we would be imposing it only on those who of their own volition had abandoned their domiciles in the States of their origin and had elected to make their permanent home or domicile here in the District of Columbia. Such persons, it may be justly contended, have no cause to complain against an income tax that is imposed upon them only because they have chosen to establish within the District of Columbia their permanent[2] places of abode and to abandon their domiciles within the States." 84 Cong. Rec. 8825.

In the House, Representative Nichols, chairman of the House conferees, and also chairman of the House District Committee in charge of fiscal affairs, submitted the conference report and stated: "Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read: 'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights.[3] . . . There must exist in combination the fact of residence and animus manendi—' which means

[2] We do not understand "permanent" to have been used in a literal sense. Of course it cannot be known without the gift of prophecy whether a given abode is "permanent" in the strictest sense. But beyond this, it is frequently used in the authorities on domicile to describe that which is not merely "temporary," or to describe a dwelling for the time being which there is no presently existing intent to give up. And further, compare a statement by Representative Dirksen on the floor of the House, 84 Cong. Rec. 8973.

[3] Exercise of political rights elsewhere cannot be considered as meant to be conclusive on the issue of taxability in the District. See statement by Representative Dirksen on the floor of the House. *Ibid.*

residence and his intention to return [*sic*]; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States." 84 Cong. Rec. 8974.

Representative Bates, another of the House conferees, stated in response to a question regarding the possibility of triple taxation, "We raised that particular point [in conference] because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation . . . ." 84 Cong. Rec. 8973.

The unusual character of the National Capital, making the income tax a "very explosive and controversial item,"[4] was vividly before the Congress, and must also be considered in construing the statute imposing the tax.

The District of Columbia is an exceptional community. It is not a local municipal authority, but was established under the Constitution as the seat of the National Government. Those in Government service here are not engaged in local enterprise, although their service may be localized. Their work is that of the nation, and their pay comes not from local sources but from the whole country. Because of its character as a federal city, there is no local political constituency with whose activities those living in it may identify themselves as a symbol of their acceptance of a local domicile.

Not all who flock here are birds of a feather. Some enter the Civil Service, finding tenure and pay there more secure than in private enterprise. Political ties are of no consequence in obtaining or maintaining their positions. At the other extreme are those who hold appointive office at the pleasure of the appointing officer. These latter, as well as appointive officers with definite but unprotected tenure, and all elective officers, usually owe their presence here to the intimate and influential part they have played in community life in one of the States.

Relatively few persons here in any branch of the Government service can truthfully and accurately lay claim to an intention to sever themselves from the service on any exact date. Persons in all branches usually desire, quite naturally and properly, to continue family life and to have the comforts of a domestic establishment for whatever may be the term of their stay here. This is true of many

[4] 84 Cong. Rec. 72.

Senators and Congressmen, cited by Senator Overton as typical of those whom the limitation of the statute to persons "domiciled" here "necessarily excludes."

Turning to the judicial precedents for further guidance in construing "domicile" as used in the statute, we find it generally recognized that one who comes to Washington to enter the Government service and to live here for its duration does not thereby acquire a new domicile. More than a century ago, Justice Parker of New Hampshire observed that "It has generally been considered that persons appointed to public office under the authority of the United States, and taking up their residence in Washington for the purpose of executing the duties of such office, do not thereby, while engaged in the service of the government, lose their domicil in the place where they before resided, unless they intend on removing there to make Washington their permanent[5] residence." See *Atherton* v. *Thornton*, 8 N. H. 178, 180. By and large, subsequent cases have taken a like view.[6] It should also be observed that a policy against loss of domicile by sojourn in Washington is expressed in the constitutions and statutes of many states.[7] Of course no individual case, constitution, or statute is controlling, but the general trend of these authorities is a significant recognition that the distinctive character of Washington habitation for federal service is meaningful to those who are served as well as to those in the service.

From these various data on Congressional intent, it is apparent that the present cases are not governed by the tests usually employed in cases where the element of Federal service in the Fed-

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[5] See note 2, *supra*.

[6] Walden v. Canfield, 2 Rob. (La.) 466; Lesh v. Lesh, 13 Pa. Dist. Ct. 537; see Woodworth v. St. Paul, M. & M. Ry. Co., 18 F. 282, 284; Commonwealth v. Jones, 12 Pa. St. 365, 371; cf. Newman v. United States, 43 App. D. C. 53, 70; reversed on another ground, 238 U. S. 537; Deming v. United States, 59 App. D. C. 188; Campbell v. Ramsey, 150 Kans. 368, 388; Hannon v. Grizzard, 89 N. C. 115. But cf. Bradstreet v Bradstreet, 18 App. D. C. 223; Sparks v. Sparks, 114 Tenn. 666.

Professor Beale has summarized the cases as follows: "Presence for the purpose of performing the duties of a civil office will not of itself effect a change of domicil; there is no inference of *animus manendi* from the fact of the new residence, since it is explained by the fact of office holding. It makes no difference whether the office is elective or appointive; nor is it material whether the appointment is in its nature merely temporary or has a degree of permanence, though the permanence of the appointment is an element to be considered in determining the domicil." I Beale, Conflict of Laws § 22.6. See also, Restatement, Conflict of Laws, pp. 42-43.

[7] 1 Beale, Conflict of Laws, p. 172, note 2.

eral City is not present.[8] We hold that a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in the Government service. A contrary decision would disregard the statements made on the floor of Congress as to the meaning of the statute, fail to give proper weight to the trend of judicial decisions, with which Congress should be taken to have been cognizant, and result in a wholesale finding of domicile on the part of Government servants quite obviously at variance with Congressional policy. Further, Congress did not intend that one living here indefinitely while in the Government service be held domiciled here simply because he does not maintain a domestic establishment at the place he hails from. Such a rule would result in taxing those unable to maintain two establishments, and exempting those able to meet such a burden—thus reversing the usual philosophy of income tax as one based on ability to pay.

On the other hand, we hold that persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled.[9] A decision that the statute lays a tax only on those with an affirmative intent to remain here the rest of their days would be at odds with the prevailing concept of domicile, and would give the statute scope far narrower than Congress must have intended.

Cases falling clearly within such broad rules aside, the question of domicile is a difficult one of fact to be settled only by a realistic and conscientious review of the many relevant (and frequently conflicting) *indicia* of where a man's home[10] is and according to the established modes of proof.

The place where a man lives is properly taken to be his domicile until facts adduced establish the contrary. *Ennis* v. *Smith*, 14

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[8] Cf. Williamson v. Osenton, 232 U. S. 619, 624; Gilbert v. David, 235 U. S. 561.

[9] This is not inconsistent with our holding that domicile here does not follow from mere indefiniteness of the period of one's stay. While the intention to return must be fixed, the date need not be; while the intention to return must be unconditional, the time may be, and in most cases of necessity is, contingent. The intention must not waver before the uncertainties of time, but one may not be visited with unwelcome domicile for lacking the gift of prophecy.

[10] Of course this term does not have the magic qualities of a divining rod in locating domicile. In fact, the search for the domicile of any person capable of acquiring a domicile of choice is but a search for his "home". See Beale, Social Justice and Business Costs, 49 Harv. L. Rev. 593, 596; 1 Beale, Conflict of Laws, § 19.1.

How. 400, 423; *Anderson* v. *Watt*, 138 U. S. 694, 706. The taxing authority is warranted in treating as *prima facie* taxable any person quartered in the District on tax day whose status it deems doubtful. It is not an unreasonable burden upon the individual, who knows best whence he came, what he left behind, and his own attitudes, to require him to establish domicile elsewhere if he is to escape the tax.

To hold taxable one who contends that he is not domiciled here, the Board need not find the exact time when the "attitude and relationship of person to place" which constitutes domicile, *Texas* v. *Florida*, 306 U. S. 398, 411, were formed, so long as it finds they were formed before the tax day. What was at first a firm intent to return may have withered gradually in consequence of dissolving associations elsewhere and growing interests in the District. It is common experience that this process usually is unmarked by any dramatic or even sharply defined episode. The taxing authority need not find just when the intent was finally dissipated; it is enough that it finds that this has happened before the tax day.

If one has at any time become domiciled here, it is his burden to establish any change of status upon which he relies to escape the tax. *Anderson* v. *Watt*, *supra*, at p. 706.

In order to retain his former domicile, one who comes to the District to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service. A mere sentimental attachment will not hold the old domicile. And residence in the District with a nearly equal readiness to go back where one came from or to any other community offering advantages upon the termination of service is not enough.

One's testimony with regard to his intention is of course to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negatived by other declarations and inconsistent acts.

Whether or not one votes where he claims domicile is highly relevant but by no means controlling.[11] Each state prescribes for itself the qualifications of its voters, and each has its own machinery for determining compliance with such qualifications. A vote cast without challenge and adjudication may indicate only laxity of the

[11] See statements of Representative Dirksen, 84 Cong. Rec. 8973.

state officials, and even an adjudication of the right to vote canno preclude the levy of a tax by an arm of the Federal Government On the other hand, failure to vote elsewhere is, of course, not con clusive that domicile is here.

Also of great significance is the nature of the position which bring one to or keeps him in the service of the Government: whether con tinuous or emergency, special or war-time in character; whether re quiring fixed residence in the District or only intermittent stays whether entailing monetary sacrifices or betterment; and whethe political or non-political. Those dependent upon the action of local constituency on the first Tuesday after the first Monday i November are of course loath to leave their local identification behind when taking up Government duties in Washington.

Of course the manner of living here, taken in consideration wit one's station in life, is relevant. Did he hire a furnished roon or establish himself by the purchase of a house? Or did he ren a house or apartment? Has he brought his family and dependent here? Has he brought his goods? What relations has he t churches, clubs, lodges, and investments that identify him with th District?

All facts which go to show the relations retained to one's forme place of abode are relevant in determining domicile. What bridge have been kept and what have been burned? Does he retain a plac of abode there, or is there a family home with which he retain identity? Does he have investments in local property or enter prise which attach him to the community? What are his affilia tions with the professional, religious, and fraternal life of the com munity, and what other associations does he cling to? How per manent was his domicile in the community from which he came Had it long been a family seat, or was he there a bird of passage Would a return to the old community pick up threads of close as sociation? Or has he so severed his relations that his old com munity is as strange as another? Did he pay taxes in the old com munity because of his retention of domicile which he could hav avoided by giving it up? Were they nominal or substantial In view of the legislative history showing that Congress was con cerned lest there be "triple taxation"—Federal, State and Distric —the Board should consider whether taxes similar in character t those laid by this Act have been paid elsewhere. See statement o Representative Bates, quoted *supra*, p. 6.

Our mention of these considerations as being relevant must not be taken as an indication of the relative weights to be attached to them, as an implied negation of the relevance of others, or as an effort to suggest a formula to handle all cases that may arise, or the possibility of devising one.

In view of what we have said, it is clear that the present cases did not call for rulings of non-taxability "as a matter of law." On the other hand, we do not consider whether taxability follows as a matter of law, as petitioner contends it does, for the factual inquiries and findings of the Board, made under a view of the law not our own, are quite likely not in all respects those which the Board would have made had it proceeded with knowledge of our opinion, and are in some respects ambiguous for the purpose of decision in accordance with it. Accordingly, we reverse the decisions by the United States Court of Appeals for the District of Columbia and remand these cases to that Court with directions to remand to the Board for further proceedings in conformity with this opinion.

Reversed.

The CHIEF JUSTICE, Mr. Justice ROBERTS, and MR. JUSTICE REED, took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk, Supreme Court, U. S.